

## BASE PROSPECTUS

Dated 16th September, 2008

### Merrill Lynch S.A.

*(a Luxembourg Limited Company)*

### Merrill Lynch International & Co. C.V.

*(a Netherlands Antilles Limited Partnership)*

## NOTE, WARRANT AND CERTIFICATE PROGRAMME

Unconditionally and irrevocably guaranteed as to payment and delivery obligations

by

### Merrill Lynch & Co., Inc.

*(a Delaware (U.S.A.) corporation)*

*This document (the "Base Prospectus") constitutes a base prospectus in respect of the Programme (as defined below). Any Securities (as defined below) issued on or after the date of this Base Prospectus are issued subject to the provisions herein. This Base Prospectus constitutes a base prospectus for the purpose of Article 5.4 of Directive 2003/71/EC (the "Prospectus Directive"). The Issuers have also prepared a registration document (the "Registration Document") for use in connection with the issue of Securities under the Programme. Securities issued under the Programme by way of Registration Document shall be documented in a Securities Note (the "Securities Note"), and, if applicable, a Summary (the "Summary"). The Registration Document and any Securities Note and Summary prepared in connection therewith do not form part of this Base Prospectus.*

Under the terms of the Note, Warrant and Certificate Programme (the "Programme"), Merrill Lynch S.A. ("MLSA") may from time to time issue notes ("Notes") or certificates ("Certificates") and Merrill Lynch International & Co. C.V. ("MLICo.") and, together with MLSA, the "Issuers" and each an "Issuer") may from time to time issue Certificates or warrants ("Warrants" and, together with Certificates, "W&C Securities", and W&C Securities together with Notes, "Securities"). Securities of any kind may be issued including but not limited to Securities relating to a specified index or a basket of indices ("Index Linked Securities"), a specified share or a basket of shares ("Share Linked Securities"), a specified debt instrument or a basket of debt instruments ("Debt Linked Securities"), a specified GDR or ADR or basket of GDRs and/or ADRs ("GDR/ADR Linked Securities"), a specified currency or a basket of currencies ("FX Linked Securities"), a specified commodity or commodity index or a basket of commodities and/or commodity indices ("Commodity Linked Securities"), a specified fund or basket of funds ("Fund Linked Securities"), a specified inflation index or a basket of inflation indices ("Inflation Linked Securities") and, in the case of Notes and Certificates, the credit of a specified entity or entities ("Credit Linked Notes and Certificates") or any combination of the foregoing. Securities may also bear interest (in the case of Notes) or pay additional amounts (in the case of W&C Securities). Each issue of Notes will be issued on the terms set out herein which are relevant to such Notes under "Terms and Conditions of the Notes" on pages 97 - 125 and the Additional Terms and Conditions on pages 197 - 289 (the "Note Conditions") and each issue of Warrants and Certificates will be issued on the terms set out herein which are relevant to such W&C Securities under "Terms and Conditions of the W&C Securities" on pages 156 - 195 and the Additional Terms and Conditions on pages 197 - 297 (the "W&C Conditions") and, in each case, on such additional terms as will be set out in the applicable Final Terms (the "Final Terms").

Merrill Lynch & Co., Inc. ("ML&Co.") has, in a guarantee dated 16th September, 2008 (the "Guarantee") irrevocably and unconditionally guaranteed the payment and delivery obligations in respect of the Securities issued by each Issuer from time to time under the Programme (see "Form of Guarantee" on page 298). The Guarantee will be governed by, and construed in accordance with, the laws of the State of New York. The Securities will be governed by, and construed in accordance with English law.

The maximum aggregate nominal amount of all Notes from time to time outstanding under the Programme will not exceed EUR 15,000,000,000 (or its equivalent in other currencies), subject to increase as described herein.

Application has been made to the *Commission de Surveillance du Secteur Financier* (the "CSSF") in its capacity as competent authority under the Luxembourg Act dated 10th July 2005 on prospectuses for securities to approve this document as a base prospectus. Application has also been made to the Luxembourg Stock Exchange for Securities issued under the Programme to be admitted to trading on the Luxembourg Stock Exchange's regulated market and to be listed on the Official List of the Luxembourg Stock Exchange. The Luxembourg Stock Exchange's regulated market is a regulated market for the purposes of Directive 2004/39/EC. Application has also been made to the Luxembourg Stock Exchange for Securities issued under the Programme to be admitted to trading on the Luxembourg Stock Exchange's alternative market – Euro MTF – and to be listed on the Official List of the Luxembourg Stock Exchange.

The Programme provides that Securities may be listed or admitted to trading, as the case may be, on such further or other stock exchanges or markets as the relevant Issuer and the Dealer(s) may agree. The applicable Final Terms will specify whether or not the Securities are to be listed on the Official List of the Luxembourg Stock Exchange and traded on the regulated market, Euro MTF and/or any other stock exchanges. The relevant Issuer may also issue unlisted Securities and/or Securities not admitted to trading on any market.

Any person (an "Investor") intending to acquire or acquiring any securities from any person (an "Offeror") should be aware that, in the context of an offer of securities to the public as defined in the Prospectus Directive, the Issuer may be responsible to the Investor for the Base Prospectus only if the Issuer is acting in association with that Offeror to make the offer to the Investor. Each Investor should therefore verify with the Offeror whether or not the Offeror is acting in association with the Issuer. If the Offeror is not acting in association with the Issuer, the Investor should check with the Offeror whether anyone is responsible for the Base Prospectus for the purposes of Article 6 of the Prospectus Directive as implemented by the national legislation of each European Economic Area Member State in the context of the offer to the public, and, if so, who that person is. If the Investor is in any doubt about whether it can rely on the Base Prospectus and/or who is responsible for its contents it should take legal advice.

The Securities, the Guarantee and, in certain cases, the Entitlement (as defined herein) have not been and will not be registered under the United States Securities Act of 1933, as amended (the "Securities Act"), or under any state securities laws and the Securities may not be offered, sold, transferred, pledged, delivered, exercised or redeemed, directly or indirectly, at any time within the United States or to, or for the account or benefit of, any U.S. person (as defined herein) except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. In addition, certain issues of Securities including all issues of Notes and Certificates, and all Entitlements may not at any time be offered, sold or delivered in the United States or to, or for the account or benefit of, U.S. Persons, nor may any U.S. persons at any time trade or maintain a position in such Securities. Neither Issuer has registered as an investment company pursuant to the United States Investment Company Act of 1940, as amended (the "1940 Act") and the rules thereunder. MLICo., may offer and sell Warrants of certain issues within the United States or to, or for the account or benefit of, U.S. persons exclusively to persons reasonably believed by MLICo., to be qualified institutional buyers (each a "QIB") as defined in Rule 144A under the Securities Act ("Rule 144A") who are also each a qualified purchaser (each a "QP") within the meaning of Section 3(c)(7) and as defined in Section 2(a)(51) of the 1940 Act and the rules thereunder and who have executed an Investor Representation Letter (as defined herein) prior to acquiring any interest in the Warrants. Each purchaser of Warrants being offered within the United States or to, or for the account or benefit of, a U.S. person is hereby notified that the offer and sale of such Warrants is being made in reliance upon an exemption from the registration requirements of the Securities Act and the 1940 Act. In certain circumstances, exercise of Securities will be conditional upon certification as to non-U.S. beneficial ownership or in the case of certain Series of Warrants that the holder (and any person on whose behalf the holder is acting) is a QIB and a QP. See "Terms and Conditions of the W&C Securities" on pages 156 to 195 and "Additional Terms and Conditions for Rule 144A Warrants" on pages 290 - 297. Investors in the Securities will be deemed to have made or be required to make certain representations and warranties in connection with purchasing the Securities. See "Notice to Purchasers and Holders of Securities and Transfer Restrictions" on page 304. Warrants sold in the United States or to, or for the account or benefit of U.S. persons who are QIBs and also QPs will be cash settled Warrants only and will, unless otherwise specified in the applicable Final Terms, be sold through Merrill Lynch, Pierce, Fenner & Smith Incorporated, which is a registered broker dealer in the United States.

For a description of certain further restrictions on offers and sales of the Securities and on the distribution of this Base Prospectus, see "Offering and Sale" on page 349.

Each issue of Securities will be issued in the form set out in Form of the Securities on pages 55 - 59.

Prospective purchasers of Securities should ensure that they understand the nature of the relevant Securities and the extent of their exposure to risks and that they consider the suitability of the relevant Securities as an investment in the light of their own circumstances and financial condition. Securities involve a high degree of risk and potential investors should be prepared to sustain a total loss of the purchase price of their Securities. See "Risk Factors" on pages 28 -49.

Dated 16th September, 2008

**MERRILL LYNCH INTERNATIONAL**

## **IMPORTANT NOTICES**

**This Base Prospectus has been approved by the CSSF as a Base Prospectus for the purposes of Article 5.4 of the Prospectus Directive. This Base Prospectus is not a prospectus for purposes of Section 12(a)(2) or any other provision of or rule under the Securities Act.**

**Each of MLSA, MLICo. and ML&Co. (the "Responsible Persons") accepts responsibility for the information contained in this Base Prospectus and to the best of the knowledge of the Responsible Persons (each having taken all reasonable care to ensure that such is the case), the information contained in this Base Prospectus is in accordance with the facts and does not omit anything likely to affect the import of such information.**

**The previous paragraph should be read in conjunction with the first paragraph on the second page of this Base Prospectus.**

**Subject as provided in the applicable Final Terms, the only persons authorised to use this Base Prospectus in connection with an offer of Securities are the persons named in the applicable Final Terms as the relevant Issuer or the relevant Dealer(s) or Manager(s) and the persons named in or identifiable following the applicable Final Terms as the Financial Intermediaries, as the case may be.**

**AN INVESTOR INTENDING TO ACQUIRE OR ACQUIRING ANY SECURITIES FROM AN OFFEROR WILL DO SO, AND OFFERS AND SALES OF THE SECURITIES TO AN INVESTOR BY AN OFFEROR WILL BE MADE, IN ACCORDANCE WITH ANY TERMS AND OTHER ARRANGEMENTS IN PLACE BETWEEN SUCH OFFEROR AND SUCH INVESTOR INCLUDING AS TO PRICE, ALLOCATIONS AND SETTLEMENT ARRANGEMENTS. THE RELEVANT ISSUER WILL NOT BE A PARTY TO ANY SUCH ARRANGEMENTS WITH INVESTORS (OTHER THAN THE MANAGER(S) OR DEALER(S) (AS THE CASE MAY BE)), IN CONNECTION WITH THE OFFER OR SALE OF THE SECURITIES AND, ACCORDINGLY, THIS BASE PROSPECTUS AND ANY FINAL TERMS WILL NOT CONTAIN SUCH INFORMATION. THE INVESTOR MUST LOOK TO THE OFFEROR AT THE TIME OF SUCH OFFER FOR THE PROVISION OF SUCH INFORMATION. THE RELEVANT ISSUER HAS NO RESPONSIBILITY TO AN INVESTOR IN RESPECT OF SUCH INFORMATION.**

**Information contained in this Base Prospectus which is sourced from a third party has been accurately reproduced and, as far as each Issuer and ML&Co. is aware and is able to ascertain from information published by the relevant third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. Each Issuer has also identified the source(s) of such information.**

**The applicable Final Terms will (if applicable) specify the nature of the responsibility taken by the relevant Issuer and ML&Co. for the information relating to the underlying asset, index or other asset or basis of reference to which the relevant Securities relate and which is contained in such Final Terms.**

**No person is or has been authorised by MLSA, MLICo., ML&Co. or Merrill Lynch International ("MLI") to give any information or to make any representation not contained in or not consistent with this Base Prospectus or any other information supplied in connection with the Programme and, if given or made, such information or representation must not be relied upon as having been authorised by MLSA, MLICo., ML&Co., MLI or any other Dealer of an issue of Securities. This document does not constitute, and may not be used for the purposes of, an offer or solicitation by anyone in any jurisdiction in which such offer or solicitation is not authorised or to any person to whom it is unlawful to make such offer or solicitation and no action is being taken to permit an offering of the Securities or the distribution of this document in any jurisdiction where any such action is required.**

**This document is to be read and construed in conjunction with all documents which are deemed to be incorporated herein by reference (see "Documents Incorporated by Reference" on page 9). This document shall be read and construed on the basis that such documents are incorporated and form part of this Base Prospectus.**

**The Securities of each issue may be sold by the relevant Issuer and/or any Dealer at such time and at such prices as the relevant Issuer and/or the Dealer(s) may select. There is no obligation upon the**

relevant Issuer or any Dealer to sell all of the Securities of any issue. The Securities of any issue may be offered or sold from time to time in one or more transactions in the over-the-counter market or otherwise at prevailing market prices or in negotiated transactions, at the discretion of the relevant Issuer.

Subject as provided in the Terms and Conditions of the Notes and the Terms and Conditions of the W&C Securities, as applicable, each Issuer shall have complete discretion as to what type of Securities it issues and when.

The Dealers have not independently verified the information contained herein. Accordingly, no representation, warranty or undertaking, express or implied, is made and no responsibility or liability is accepted by any Dealer as to the accuracy or completeness of the information contained in this Base Prospectus or any other information provided by MLSA, MLICo. and/or ML&Co. No Dealer accepts any liability in relation to the information contained or incorporated by reference in this Base Prospectus or any other information provided by MLSA, MLICo. and/or ML&Co. in connection with the Programme.

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

Neither the delivery of this Base Prospectus nor the offering, sale or delivery of any Securities shall in any circumstances imply that the information contained herein concerning MLSA, MLICo. and ML&Co. is correct at any time subsequent to the date hereof or that any other information supplied in connection with the Programme is correct as of any time subsequent to the date indicated in the document containing the same. No Dealer undertakes to review the financial condition or affairs of MLSA, MLICo. and/or ML&Co. during the life of the Programme or to advise any investor in the Securities of any information coming to their attention.

This Base Prospectus does not constitute an offer to sell or the solicitation of an offer to buy any Securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. The distribution of this Base Prospectus and the offer or sale of Securities may be restricted by law in certain jurisdictions. None of MLSA, MLICo., ML&Co. or any Dealer represents that this Base Prospectus may be lawfully distributed, or that any Securities may be lawfully offered, in compliance with any applicable registration or other requirements in any jurisdiction, or pursuant to an exemption available thereunder, or assume any responsibility for facilitating any such distribution or offer. In particular, unless specifically indicated to the contrary in the applicable Final Terms, no action has been taken by MLSA, MLICo., ML&Co. or any Dealer which is intended to permit a public offering of any Securities or distribution of this document in any jurisdiction where action for that purpose is required. Accordingly, no Securities may be offered or sold, directly or indirectly, and neither this Base Prospectus nor any advertisement or other offering material may be distributed or published in any jurisdiction, except under circumstances that will result in compliance with any applicable laws and regulations. Persons into whose possession this Base Prospectus or any Securities may come must inform themselves about, and observe, any such restrictions on the distribution of this Base Prospectus and the offering and sale of Securities. In particular, there are restrictions on the distribution of this Base Prospectus and the offer or sale of Securities in the United States, the European Economic Area (including Luxembourg, the United Kingdom, France and Italy), Japan, Singapore and the Netherlands Antilles (see "Offering and Sale" on page 349). In particular, the Securities, the Guarantee and, in certain cases, the Entitlement to be delivered upon exercise of the Securities, have not been and will not be registered under the Securities Act.



## **NOTICE TO NEW HAMPSHIRE RESIDENTS**

**NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED UNDER CHAPTER 421-B OF THE NEW HAMPSHIRE REVISED STATUTES WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE SECRETARY OF STATE OF NEW HAMPSHIRE THAT ANY DOCUMENT FILED UNDER CHAPTER 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.**

**This Base Prospectus has been prepared on the basis that, except to the extent sub-paragraph (b) below may apply, any offer of Securities in any Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of Securities. Accordingly any person making or intending to make an offer in that Relevant Member State of Securities which are the subject of an offering contemplated in this Base Prospectus as completed by final terms in relation to the offer of those Securities may only do so (a) in circumstances in which no obligation arises for the relevant Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer, or (b) if a prospectus for such offer has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in that Relevant Member State and (in either case) published, all in accordance with the Prospectus Directive, provided that any such prospectus has subsequently been completed by final terms which specify that offers may be made other than pursuant to Article 3(2) of the Prospectus Directive in that Relevant Member State and such offer is made in the period beginning and ending on the dates specified for such purpose in such prospectus or final terms, as applicable. Except to the extent sub-paragraph (b) above may apply, neither the relevant Issuer nor any Dealer have authorised, nor do they authorise, the making of any offer of Securities in circumstances in which an obligation arises for the relevant Issuer or any Dealer to publish or supplement a prospectus for such offer.**

**Securities in bearer form are subject to U.S. tax law requirements and may not be offered, sold or delivered within the United States or its possessions or to United States persons, except in certain transactions permitted by U.S. tax regulations. Unless otherwise noted, as used in this Base Prospectus, "United States" means the United States of America (including the States and District of Columbia) and its possessions and "United States person" has the meaning given to it by the United States Internal Revenue Code of 1986, as amended (the "Code") and the U.S. Treasury regulations thereunder, including U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D).**

**Certificates or Notes, or interests therein, may not at any time be offered, sold, resold or delivered, directly or indirectly, in the United States or to, or for the account or benefit of, U.S. persons and any offer, sale, resale, trade or delivery made, directly or indirectly, within the United States or to, or for the account or benefit of, a U.S. person will not be recognised.**

**Warrants have not been approved or disapproved by the United States Securities and Exchange Commission or any other securities commission or other regulatory authority in the United States, nor have the foregoing authorities reviewed or passed upon the accuracy or adequacy of this Base Prospectus. Any representation to the contrary is a criminal offence in the United States. The Warrants have not been approved by the Commodity Futures Trading Commission under the United States Commodity Exchange Act of 1936, as amended.**

**This Base Prospectus is being submitted on a confidential basis in the United States to a limited number of QIBs who are also QPs for informational use solely in connection with the consideration of the purchase of the Warrants. It may not be copied or reproduced in whole or in part nor may it be distributed or any of its contents disclosed to anyone other than the prospective investors to whom it is originally submitted.**

**Each purchaser or holder of interests in the Warrants will be deemed, by its acceptance or purchase of any such Warrants, to have made certain representations and agreements as set out in "Offering and Sale".**

**Notwithstanding anything to the contrary contained herein, each holder and beneficial owner of the Securities (and each employee, representative, or other agent of each holder and beneficial owner of the Securities) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions described herein and all materials of any kind that are provided to the holder or beneficial owner of the Securities relating to such tax treatment and tax structure (as such terms are defined in U.S. Treasury Regulation Section 1.6011-4). This authorisation of tax disclosure is retroactively effective to the commencement of discussions with holders or beneficial owners of the Securities regarding the transactions contemplated herein.**

**Each of MLSA or MLICo. has not investigated, and does not or may not have access to information that would permit it to ascertain, whether any company which has issued equity, debt or other instruments to which any Securities relate is for U.S. tax purposes a passive foreign investment company, a controlled foreign corporation, a publicly-traded partnership or other type of pass-through entity. Prospective investors in any Securities that are U.S. taxpayers should consult their own advisers concerning U.S. tax considerations relevant to an investment in such Securities.**

**In this Base Prospectus, references to "US\$", "\$" and "U.S. dollars" are to United States Dollars, references to "Singapore Dollar" and "S\$" are to Singapore Dollars and references to "euro" and "€" are to the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty establishing the European Community, as amended by the Treaty on European Union.**

**In connection with the issue of any Series of Notes, the Dealer or Dealers (if any) named as the Stabilising Manager(s) (or persons acting on behalf of any Stabilising Manager(s)) in the applicable Final Terms may over-allot Notes or effect transactions with a view to supporting the market price of the Notes at a level higher than that which might otherwise prevail. However, there is no assurance that the Stabilising Manager(s) (or persons acting on behalf of a Stabilising Manager) will undertake stabilisation action. Any stabilisation action may begin on or after the date on which adequate public disclosure of the terms of the offer of the relevant Series of Notes is made and, if begun, may be ended at any time, but it must end no later than the earlier of 30 days after the issue date of the relevant Series of Notes and 60 days after the date of the allotment of the relevant Series of Notes. Any stabilisation action or over-allotment must be conducted by the relevant Stabilising Manager(s) (or persons acting on behalf of any Stabilising Manager(s)) in accordance with all applicable laws and rules.**

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### AVAILABLE INFORMATION

ML&Co. is subject to the informational requirements of the United States Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), and, in accordance therewith, files reports and other information with the United States Securities and Exchange Commission (the "**Commission**"). Such reports and other information concerning ML&Co. can be inspected and copied at the public reference facilities maintained by the Commission in the Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549. Information on the operation of the Public Reference Room may be obtained by calling the Commission at 1-800-SEC-0330. The Commission maintains a Web site that contains reports, proxy and information statements and other materials that are filed through the Commission's Electronic Data Gathering Analysis and Retrieval System. The Web site can be accessed at <http://www.sec.gov>. In addition, similar information concerning ML&Co. can be inspected at the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

## DOCUMENTS INCORPORATED BY REFERENCE

The following documents, which have previously been published and have been filed with the CSSF shall be deemed to be incorporated in, and to form part of, this Base Prospectus:

- (a) the terms and conditions of the Notes contained in the listing particulars of MLSA dated 1st April, 2003 (the **"2003 MLSA EMTN Conditions"**), the terms and conditions of the Notes contained in the listing particulars of MLSA dated 2nd April, 2004 (the **"2004 MLSA EMTN Conditions"**), the terms and conditions of the Notes contained in the listing particulars of MLSA dated 1st April, 2005 (the **"April 2005 MLSA EMTN Conditions"**), the terms and conditions of the Notes contained in the base prospectus of MLSA dated 30th September, 2005 (the **"September 2005 MLSA EMTN Conditions"**), the terms and conditions of the Notes contained in the base prospectus of MLSA dated 10th May, 2006 (the **"2006 MLSA EMTN Conditions"**), the terms and conditions of the Notes contained in the base prospectus of MLSA dated 2nd April, 2007 (the **"2007 MLSA EMTN Conditions"**) and the terms and conditions of the Notes contained in the base prospectus of MLSA dated 1st April, 2008 (the **"2008 MLSA EMTN Conditions"**), and together with the 2003 MLSA EMTN Conditions, the 2004 MLSA EMTN Conditions, the April 2005 MLSA EMTN Conditions, the September 2005 MLSA EMTN Conditions, the 2006 MLSA EMTN Conditions and the 2007 MLSA EMTN Conditions, the **"MLSA EMTN Previous Conditions"**);
- (b) the terms and conditions of the Warrants contained in the offering circular of MLICo. dated 13th August, 2003 (the **"2003 MLICo. Conditions"**), the terms and conditions of the Warrants contained in the offering circular of MLICo. dated 20th August, 2004 (the **"2004 MLICo. Conditions"**), the terms and conditions of the Warrants contained in the offering circular of MLICo. dated 3rd November, 2005 (the **"2005 MLICo. Conditions"**), the terms and conditions of the Warrants and Certificates contained in the offering circular of MLICo. dated 9th February, 2007 (the **"February 2007 MLICo. Conditions"**), the terms and conditions (the **"September 2007 MLICo. Conditions"**) of the Warrants and Certificates contained in the offering circular of MLICo. dated 28th September, 2007 (the **"September 2007 MLICo. Offering Circular"**), the terms and conditions of the Warrants and Certificates contained in the supplement to the September 2007 MLICo. Offering Circular dated 29th November, 2007 (the **"November 2007 MLICo. Conditions"**), the terms and conditions of the Warrants and Certificates contained in the supplement to the September 2007 MLICo. Offering Circular dated 23rd April, 2008 (the **"April 2008 MLICo. Conditions"**) and the terms and conditions of the Warrants and Certificates contained in the supplement to the September 2007 MLICo. Offering Circular dated 15th July, 2008 (the **"July 2008 MLICo. Conditions"**) and, together with the 2003 MLICo. Conditions, the 2004 MLICo. Conditions, the 2005 MLICo. Conditions, the February 2007 MLICo. Conditions, the September 2007 MLICo. Conditions, the November 2007 MLICo. Conditions and the April 2008 MLICo. Conditions, the **"MLICo. Previous Conditions"**);
- (c) the terms and conditions of the Certificates contained in the information memorandum of MLSA dated 25th April, 2005 (the **"2005 MLSA Certificate Conditions"**), the terms and conditions of the Certificates contained in the information memorandum of MLSA dated 24th March, 2006 (the **"2006 MLSA Certificate Conditions"**), the terms and conditions of the Certificates contained in the information memorandum of MLSA dated 17th January, 2007 (the **"January 2007 MLSA Certificate Conditions"**), the terms and conditions of the Certificates (the **"September 2007 MLSA Certificate Conditions"**) contained in the information memorandum of MLSA dated 27th September, 2007 (the **"September 2007 MLSA Information Memorandum"**), the terms and conditions of the Certificates contained in the supplement to the September 2007 MLSA Information Memorandum dated 29th October, 2007 (the **"October 2007 MLSA Certificate Conditions"**), the terms and conditions of the Certificates contained in the supplement to the September 2007 MLSA Information Memorandum dated 15th July, 2008 (the **"15th July 2008 MLSA Certificate Conditions"**) and the terms and conditions of the Certificates contained in the supplement to the September 2007 MLSA Information Memorandum dated 24th July, 2008 (the **"24th July 2008 MLSA Certificate Conditions"**) and, together with the 2005 MLSA Certificate Conditions, the 2006 MLSA Certificate Conditions, the January 2007 MLSA Certificate Conditions, the September 2007

MLSA Certificate Conditions, the October 2007 MLSA Certificate Conditions and the 15th July 2008 MLSA Certificate Conditions, the **"MLSA Certificate Previous Conditions"**);

- (d) ML&Co.'s 2007 Annual Report on Form 10-K for the year ended 28th December, 2007 (the **"2007 Annual Report"**) (excluding the documents listed as Exhibits on pages E-1 to E-4 (Exhibit Index) except for Exhibit 99.8), which includes the audited consolidated balance sheets of ML&Co. and its subsidiaries as of 28th December, 2007 and 29th December, 2006, and the related consolidated statements of (loss)/earnings, changes in stockholders' equity, comprehensive (loss)/income and cash flows for each of the three years in the period ended 28th December, 2007, the financial statement schedule (listed as Exhibit 99.8) and the auditors' reports dated 25th February, 2008 thereon (the **"2007 Auditors' Report"**);
- (e) ML&Co.'s 2006 Annual Report on Form 10-K for the year ended 29th December, 2006 (the **"2006 Annual Report"**) (excluding the documents listed as Exhibits on pages E-1 to E-4 (Exhibit Index) except for Exhibit 99.9), which includes the audited consolidated balance sheets of the ML&Co. and its subsidiaries as of 29th December, 2006 and 30th December, 2005, and the related consolidated statements of earnings, changes in stockholders' equity, comprehensive income and cash flows for each of the three years in the period ended 29th December, 2006, the financial statement schedule (listed as Exhibit 99.9) and the auditors' reports dated 26th February, 2007 thereon (the **"2006 Auditors' Report"**);
- (f) ML&Co.'s 2008 Proxy Statement dated 14th March, 2008 in connection with its Annual Meeting of Shareholders (the **"Proxy Statement"**);
- (g) ML&Co.'s Quarterly Report on Form 10-Q for the quarterly period ended 28th March, 2008 (excluding the documents listed as Exhibits on pages 130 to 131 (Index to Exhibits)) (the **"May 2008 Quarterly Report"**);
- (h) ML&Co.'s Quarterly Report on Form 10-Q excluding Exhibits 3.1 to 10.3, 99.1 and 99.2 thereto for the quarterly period ended 27th June, 2008 (the **"August 2008 Quarterly Report"**);
- (i) ML&Co.'s Current Report on Form 8-K dated 21st February, 2008 and filed on 25th February, 2008, in relation to restatements of ML&Co.'s cash flows for each of the years ended 30th December, 2005 and 29th December, 2006 and the first, second and third quarters of 2007 (the **"February 2008 Current Report"**);
- (j) ML&Co.'s Current Report on Form 8-K dated 17th April, 2008 and filed on 17th April, 2008, in relation to its results of operations for the three-month period ended 28th March, 2008, which includes Exhibits 99.1 and 99.2 thereto (excluding the last paragraph on page 7 of Exhibit 99.1) (the **"April 2008 Current Report"**);
- (k) ML&Co.'s Current Report on Form 8-K dated 28th April, 2008 and filed on 2nd May, 2008, in relation to the appointment of Thomas K. Montag as Executive Vice President and Head of Global Sales and Trading, which includes Exhibits 10.1, 10.2, 10.3 and 99.1 thereto (excluding the last paragraph on the second page of Exhibit 99.1) (the **"May 2008 Current Report"**);
- (l) ML&Co.'s Current Report on Form 8-K dated 17th July, 2008 and filed on 17th July, 2008, in relation to its results of operations for the three- and six-month periods ended 27th June, 2008, which includes Exhibits 99.1 and 99.2 thereto (excluding the second paragraph on page 9 of Exhibit 99.1 and that the reference to Form 8-K in the first paragraph on page 10 of Exhibit 99.1 shall be deemed to refer solely to the Current Reports on Form 8-K dated 17th April, 2008, 28th April, 2008 (and filed on 2nd May, 2008) and the 17th July 2008 Current Report) (the **"17th July 2008 Current Report"**);
- (m) ML&Co.'s Current Report on Form 8-K dated 28th July, 2008 and filed on 29th July, 2008, in relation to a press release dated 28th July, 2008, which includes Exhibits 99.1 and 99.2 thereto (excluding the first paragraph on page 4 of Exhibit 99.1 and that the reference to Form 8-K in the first paragraph on page 5 of Exhibit 99.1 shall be deemed to refer solely to the Current Reports on Form 8-K dated 17th April, 2008, 28th April, 2008 (and filed on 2nd May, 2008), 17th July, 2008 and the 29th July 2008 Current Report) (the **"29th July 2008 Current Report"**);

- (n) ML&Co.'s Current Report on Form 8-K dated 7th August, 2008 and filed on 8th August, 2008, in relation to a press release dated 8th August, 2008, which includes Exhibits 99.1 thereto (excluding the last paragraph on page 2 of Exhibit 99.1 (the "**August 2008 Current Report**"));
- (o) ML&Co.'s Current Report on Form 8-K dated 3rd September, 2008 and filed on 4th September, 2008, in relation to a press release dated 4th September 2008, which includes Exhibits 99.1 thereto (excluding the last paragraph on page 2 of Exhibit 99.1 (the "**4th September 2008 Current Report**"));
- (p) ML&Co.'s Current Report on Form 8-K dated 14th September, 2008 and filed on 15th September, 2008 in relation to a press release dated 15th September, 2008 (the "**15th September 2008 Current Report**");
- (q) MLSA's audited financial statements for the year ended 31st December, 2006 and the auditor's report dated 22nd March, 2007 thereon (the "**MLSA 2006 Accounts**") and for the year ended 31st December, 2007 and the auditor's report dated 20th March, 2008 thereon (the "**MLSA 2007 Accounts**"); and
- (r) MLICo.'s financial statements (including the auditors' report and the notes to the accounts) for the years ended 2006 (the "**MLICo. 2006 Accounts**") and 2007 (the "**MLICo. 2007 Accounts**").

To the extent that this document is used in connection with an issue or offering of Securities under the Programme in circumstances where the Prospectus Directive does not apply, the following documents, which may be produced or issued from time to time after the date hereof, shall upon publication be deemed to form part of this document. For the avoidance of doubt, such documents will not form part of this Base Prospectus for the purpose of Article 5.4 of the Prospectus Directive:

- (i) the most recent annual report on Form 10-K and proxy statement of ML&Co. filed with the United States Securities and Exchange Commission (the "**Commission**"); and
- (ii) any other reports filed by the ML&Co. with the Commission pursuant to Sections 13(a), 13(c), 14 or 15(d) of the United States Securities Exchange Act of 1934, as amended (the "**Exchange Act**") and the rules and regulations thereunder subsequent to the date of the financial statements included in the annual report on Form 10-K referred to in sub-paragraph (d) above including, without limitation, any quarterly report on Form 10-Q.

## Documents Incorporated by Reference Cross-Reference List

### MLSA EMTN Previous Conditions

<i>2003 MLSA EMTN Conditions</i>	<i>Pages 22-45</i>	-
<i>2004 MLSA EMTN Conditions</i>	<i>Pages 24-48</i>	-
<i>April 2005 MLSA EMTN Conditions</i>	<i>Pages 23-47</i>	-
<i>September 2005 MLSA EMTN Conditions</i>	<i>Pages 46-67</i>	-
<i>2006 MLSA EMTN Conditions</i>	<i>Pages 55-77</i>	-
<i>2007 MLSA EMTN Conditions</i>	<i>Pages 63-88</i>	-
<i>2008 MLSA EMTN Conditions</i>	<i>Pages 88-148</i>	-

### MLICo. Previous Conditions

<i>2003 MLICo. Conditions</i>	<i>Pages 20-59</i>	-
<i>2004 MLICo. Conditions</i>	<i>Pages 20-59</i>	-
<i>2005 MLICo. Conditions</i>	<i>Pages 37-74</i>	-
<i>February 2007 MLICo. Conditions</i>	<i>Pages 43-83</i>	-
<i>September 2007 MLICo. Conditions</i>	<i>Pages 45-85</i>	-
<i>November 2007 MLICo. Conditions</i>	<i>Pages 24-66</i>	-
<i>April 2008 MLICo. Conditions</i>	<i>Pages 27-71</i>	-
<i>July 2008 MLICo. Conditions</i>	<i>Pages 20-68</i>	-

### MLSA Certificate Previous Conditions

<i>2005 MLSA Certificate Conditions</i>	<i>Pages 18 -43</i>	-
<i>2006 MLSA Certificate Conditions</i>	<i>Pages 30 -54</i>	-
<i>January 2007 MLSA Certificate Conditions</i>	<i>Pages 34 -58</i>	-
<i>September 2007 MLSA Certificate Conditions</i>	<i>Pages 40 -69</i>	-
<i>October 2007 MLSA Certificate Conditions</i>	<i>3rd paragraph on page 2</i>	-
<i>15th July 2008 MLSA Certificate Conditions</i>	<i>Pages 17-48</i>	-
<i>24th July 2008 MLSA Certificate Conditions</i>	<i>Page 19</i>	-

### 2007 Annual Report

<i>Selected Financial Data</i>	<i>page 19</i>	<i>A4.3.1</i>
<i>Introduction</i>	<i>pages 20-21</i>	<i>A4.6.1.1/A4.6.2</i>
<i>Strategic Transactions</i>	<i>page 23</i>	<i>A4.6.1.2</i>
<i>Risk Factors that Could Affect our Business</i>	<i>pages 24-27</i>	<i>A4.4</i>
<i>Results of Operations</i>	<i>pages 40-41, 44, 48-49</i>	<i>A4.6.1.2/A4.6.2</i>
<i>Consolidated Statements of (Loss)/Earnings</i>	<i>page 81</i>	<i>A4.3.1/A4.13.1/A4.13.2</i>
<i>Consolidated Balance Sheets</i>	<i>pages 49, 82-83</i>	<i>A4.3.1/A4.13.1/A4.13.2</i>
<i>Consolidated Statements of Changes in Stockholders'</i>	<i>page 84</i>	<i>A4.3.1/A4.13.1/A4.13.2</i>



## **Equity**

<i>Consolidated Statements of Comprehensive (Loss)/Income</i>	<i>page 85</i>	<i>A4.3.1/A4.13.1/A4.13.2</i>
<i>Consolidated Statements of Cash Flows</i>	<i>page 86</i>	<i>A4.3.1/A4.13.1/A4.13.2</i>
<i>Notes to Consolidated Financial Statements</i>	<i>pages 87-155</i>	<i>A4.3.1/A4.13.1/A4.13.2</i>
<i>Notes to Consolidated Financial Statements – Note 1. Summary of Significant Accounting Policies – Description of Business</i>	<i>page 87</i>	<i>A4.6.1.1/A4.6.2/A4.7.1</i>
<i>Notes to Consolidated Financial Statements – Note 10. Stockholders' Equity and Earnings per Share</i>	<i>pages 130-133</i>	<i>A4.14.1.1</i>
<i>Notes to Consolidated Financial Statements – Note 11. Commitments, Contingencies and Guarantees</i>	<i>pages 133-135</i>	<i>A4.13.6</i>
<i>Legal Proceedings</i>	<i>pages 162-164</i>	<i>A4.13.6</i>
<i>Executive Officers of Merrill Lynch &amp; Co., Inc.</i>	<i>page 167</i>	<i>A4.10.1</i>
<i>Corporate Governance</i>	<i>page 168</i>	<i>A4.11.2</i>
<i>Report of Independent Registered Public Accounting Firm</i>	<i>page 80</i>	<i>A4.3.1/A4.13.1/A4.13.2/ A4.16.1</i>

## **2006 Annual Report**

<i>Selected Financial Data</i>	<i>page 20</i>	<i>A4.3.1</i>
<i>Overview</i>	<i>pages 21-22</i>	<i>A4.6.2</i>
<i>Risk Factors that Could Affect our Business</i>	<i>pages 23-24</i>	<i>A4.4</i>
<i>Business Segments</i>	<i>pages 31-39</i>	<i>A4.6.1.1/A4.6.1.2</i>
<i>Consolidated Balance Sheets</i>	<i>pages 40-43, 72-73</i>	<i>A4.13.1/A4.13.2</i>
<i>Stockholders' Equity and Earnings per Share</i>	<i>pages 43, 108-110</i>	<i>A4.14.1.1</i>
<i>Consolidated Statements of Earnings</i>	<i>page 71</i>	<i>A4.13.1/A4.13.2</i>
<i>Consolidated Statements of Comprehensive Income</i>	<i>page 75</i>	<i>A4.13.1/A4.13.2</i>
<i>Consolidated Statements of Cash Flow</i>	<i>page 76</i>	<i>A4.13.1/A4.13.2</i>
<i>Consolidated Financial Statements and Notes thereto</i>	<i>pages 71-129</i>	<i>A4.13.1/A4.13.2</i>
<i>Notes to Consolidated Financial Statements – Note 1 Summary of Significant Accounting Policies – Description of Business</i>	<i>page 77</i>	<i>A4.6.1.1/A4.7.1</i>
<i>Litigation</i>	<i>pages 26, 110-111 and 135-137</i>	<i>A4.13.6</i>
<i>Executive Officers</i>	<i>page 139</i>	<i>A4.10.1</i>
<i>Corporate Governance</i>	<i>page 140</i>	<i>A4.11.2</i>
<i>Report of Independent Registered Public Accounting Firm</i>	<i>pages 69-70</i>	<i>A4.3.1/A4.13.1/A4.13.2/ A4.16.1</i>

## **Proxy Statement**

<i>Board Committees</i>	<i>pages 17-18</i>	<i>A4.11.1</i>
<i>Other Matters—Certain Relationships and</i>	<i>page 60</i>	<i>A4.12.1</i>

## Transactions

### May 2008 Quarterly Report

<i>Quarterly Report on Form 10-Q for the quarterly period ended 28th March, 2008</i>	<i>All</i>	<i>A4.3.1/A4.3.2/A4.13.2/A4.13.5.1</i>
<i>Part I – Item 1. Financial Statements (unaudited)</i>	<i>pages 4-8</i>	<i>A4.3.1/A4.3.2/A4.13.2/A4.13.5.1</i>
<i>Part I – Item 1. Financial Statements (unaudited) – Notes to Condensed Consolidated Financial Statements</i>	<i>pages 9-63</i>	<i>A4.6.1.1/ A4.6.2</i>
<i>Report of Independent Registered Public Accounting Firm</i>	<i>page 64</i>	<i>A4.13.5.1</i>
<i>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</i>	<i>pages 65-123</i>	<i>A4.3.1/A4.3.2/A4.6.1.1/A4.6.2/A4.13.5.1/A4.13.2/A4.13.6</i>
<i>Consolidated Balance Sheets</i>	<i>page 88</i>	<i>A4.3.1/A4.3.2/A4.13.2/A4.13.5.1</i>
<i>Part II – Other Information – Item 1. Legal Proceedings</i>	<i>pages 124-125</i>	<i>A4.13.6</i>

### August 2008 Quarterly Report

<i>Quarterly Report on Form 10-Q for the quarterly period ended 27th June, 2008</i>	<i>All</i>	<i>A4.3.1/A4.3.2/A4.13.2/A4.13.5.1</i>
<i>Part I - Item 1. Financial Statements (unaudited)</i>	<i>Pages 4-9</i>	<i>A4.3.1/A4.3.2/A4.13.2/A4.13.5.1</i>
<i>Part I - Item 1. Financial Statements (unaudited) - Notes to Condensed Consolidated Financial Statements</i>	<i>Pages 10-70</i>	<i>A4.5.1.5/A4.6.1.1/A4.6.2/A4.13.6/ A4.14.1.1</i>
<i>Report of Independent Registered Public Accounting Firm</i>	<i>Page 71</i>	<i>A4.13.5.1</i>
<i>Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations</i>	<i>Pages 72-137</i>	<i>A4.3.1/A4.3.2/A4.5.1.5/A4.6.1.1/A4.6.2/A4.13.5.1/A4.13.6</i>
<i>Consolidated Balance Sheets</i>	<i>Page 99</i>	<i>A4.3.1/A4.3.2/A4.13.2</i>
<i>Part II – Other Information - Item 1. Legal Proceedings</i>	<i>Pages 138-140</i>	<i>A4.13.6</i>

### February 2008 Current Report

<i>Current Report on Form 8-K dated 21st February, 2008 and filed on 25th February, 2008</i>	<i>All</i>	<i>A4.3.1/A4.13.1/A4.13.2</i>
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### April 2008 Current Report

<i>Current Report on Form 8-K dated 17th April, 2008 and filed on 17th April, 2008</i>	<i>All</i>	<i>A4.13.2/A4.13.5.1</i>
<i>Exhibit 99.1</i>	<i>Exhibit 99.1</i>	<i>A4.13.2/A4.13.5.1/A4.14.1.1</i>

<i>Exhibit 99.2</i>	<i>Exhibit 99.2</i>	<i>A4.13.2/A4.13.5.1</i>
<b>May 2008 Current Report</b>		
<i>Current Report on Form 8-K dated 28th April, 2008 and filed on 2nd May, 2008</i>	<i>All</i>	<i>N/A</i>
<b>17th July 2008 Current Report</b>		
<i>Current Report on Form 8-K dated 17th July, 2008 and filed on 17th July, 2008</i>	<i>All</i>	<i>A4.13.2/A4.13.5.1</i>
<i>Exhibit 99.1</i>	<i>Exhibit 99.1</i>	<i>A4.13.2/A4.13.5.1/A4.14.1.1</i>
<i>Exhibit 99.2</i>	<i>Exhibit 99.2</i>	<i>A4.13.2/A4.13.5.1</i>
<b>29th July 2008 Current Report</b>		
<i>Current Report on Form 8-K dated 28th July, 2008 and filed on 29th July, 2008</i>	<i>All</i>	<i>-</i>
<i>Exhibit 99.1</i>	<i>Exhibit 99.1</i>	<i>A4.5.2.1/A4.5.2.2/A4.5.2.3/A4.6.1.2</i>
<i>Exhibit 99.2</i>	<i>Exhibit 99.2</i>	<i>A14.13.7/A4.14.1.1</i>
<b>August 2008 Current Report</b>		
<i>Current Report on Form 8-K dated 7th August, 2008 and filed on 8th August, 2008</i>	<i>All</i>	<i>-</i>
<i>The press release dated 7th August, 2008, which is filed as Exhibit 99.1 to the Current Report on Form 8-K dated 7th August, 2008 and filed on 8th August, 2008, referred to above</i>	<i>Exhibit 99.1</i>	<i>A4.5.2.1/A4.5.2.2/A4.5.2.3/A4.6.1.2</i>
<b>4th September 2008 Current Report</b>		
<i>Current Report on Form 8-K dated 3rd September, 2008 and filed on 4th September, 2008</i>	<i>All</i>	<i>-</i>
<i>The press release dated 4th September, 2008, which is filed as Exhibit 99.1 to the Current Report on Form 8-K dated 3rd September, 2008 and filed on 4th September, 2008, referred to above</i>	<i>Exhibit 99.1</i>	<i>A4.10.1</i>
<b>15th September 2008 Current Report</b>		
<i>Current Report on Form 8-K dated 14th September 2008 and filed on 15th September, 2008</i>	<i>All</i>	<i>A.4.8.2</i>
<b>MLSA 2006 Accounts</b>		
<i>Auditor's Report</i>	<i>pages 1-2</i>	<i>A4.13.1</i>
<i>Balance Sheet</i>	<i>page 3</i>	<i>A4.13.1</i>
<i>Profit and Loss Account</i>	<i>page 4</i>	<i>A4.13.1</i>

<i>Notes to the Accounts</i>	<i>pages 5-16</i>	<i>A4.13.1</i>
<i>Cash Flow Statement</i>	<i>page 16</i>	<i>A4.13.1</i>

#### **MLSA 2007 Accounts**

<i>Auditors' Report</i>	<i>pages 1-2</i>	<i>A4.13.1</i>
<i>Balance Sheet</i>	<i>page 3</i>	<i>A4.13.1</i>
<i>Profit and Loss Account</i>	<i>page 4</i>	<i>A4.13.1</i>
<i>Notes to the Accounts</i>	<i>pages 5-16</i>	<i>A4.13.1</i>
<i>Cash Flow Statement</i>	<i>page 16</i>	<i>A4.13.1</i>

#### **MLICo. 2006 Accounts**

<i>General Partner's Annual Report</i>	<i>pages 1-2</i>	<i>A4.13.1</i>
<i>Independent Auditors' Report to the General Partner</i>	<i>pages 3-4</i>	<i>A4.13.1</i>
<i>Profit and Loss Account</i>	<i>page 5</i>	<i>A4.13.1</i>
<i>Balance Sheet</i>	<i>page 6</i>	<i>A4.13.1</i>
<i>Note to the Financial Statements</i>	<i>pages 7-19</i>	<i>A4.13.1</i>

#### **MLICo. 2007 Accounts**

<i>General Partner's Annual Report</i>	<i>pages 1-2</i>	<i>A4.13.1</i>
<i>Independent Auditors' Report to the General Partner</i>	<i>pages 3-4</i>	<i>A4.13.1</i>
<i>Profit and Loss Account</i>	<i>page 5</i>	<i>A4.13.1</i>
<i>Balance Sheet</i>	<i>page 6</i>	<i>A4.13.1</i>
<i>Cash Flow Statement</i>	<i>page 7</i>	<i>A4.13.1</i>
<i>Note to the Financial Statements</i>	<i>page 8-23</i>	<i>A4.13.1</i>

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

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

Copies of documents incorporated by reference in this Base Prospectus will be made available, free of charge, at the offices of the Principal Security Agents. Requests for such documents should be directed to any Principal Security Agent at its specified office. Copies of documents incorporated by reference in their Base Prospectus will also be available on the Luxembourg Stock Exchange website ([www.bourse.lu](http://www.bourse.lu)). Copies of documents incorporated by reference into this Base Prospectus can also be obtained from the ML&Co.'s Corporate Secretary's office at 222 Broadway, 17th Floor, New York, New York, 10038-2510, USA.

The Issuers and ML&Co. will, in the event of any significant new factor, material mistake or inaccuracy relating to information included in this Base Prospectus which is capable of affecting the assessment of any

**Securities, prepare a supplement to this Base Prospectus or publish a new Base Prospectus for use in connection with any subsequent issue of Securities.**

## SUMMARY OF THE PROGRAMME

This summary must be read as an introduction to this Base Prospectus. Any decision to invest in any Securities should be based on a consideration of this Base Prospectus as a whole, including the documents incorporated by reference. Following the implementation of the relevant provisions of the Prospectus Directive in each Member State of the European Economic Area, no civil liability will attach to the Responsible Persons in any such Member State in respect of this Summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with the other parts of this Base Prospectus. Where a claim relating to information contained in this Base Prospectus is brought before a court in a Member State of the European Economic Area, the plaintiff may, under the national legislation of the Member State where the claim is brought, be required to bear the costs of translating the Base Prospectus before the legal proceedings are initiated.

*Words and expressions defined in the "Terms and Conditions of the Notes" or in the "Terms and Conditions of the W&C Securities" as applicable and in the remainder of this Base Prospectus shall have the same meanings in this summary. MLSA may issue Notes and Certificates and MLICo. may issue Warrants and Certificates. Notes, Certificates and Warrants are together referred to as "Securities".*

Issuers:	Merrill Lynch S.A. ("MLSA") Merrill Lynch International & Co C.V. ("MLICo.")
Guarantor:	Merrill Lynch & Co., Inc. ("ML&Co.")
Description:	Note, Warrant and Certificate Programme
Guarantee:	The Securities are unconditionally and irrevocably guaranteed by ML&Co. upon and subject to the terms set out in the Guarantee.
Calculation Agent:	Merrill Lynch International or such other calculation agent specified in the applicable Final Terms.
Arranger:	Merrill Lynch International
In respect of Notes:	
Issuer:	MLSA
Dealers:	Merrill Lynch International Merrill Lynch Capital Markets AG Merrill Lynch (Singapore) Pte. Ltd. Notes may also be issued to other dealers and third parties.
Maximum nominal amount of Notes which may be issued under the Programme:	Up to EUR 15,000,000,000 (or its equivalent in other currencies)
Principal Paying Agent:	Deutsche Bank AG, London Branch
Issue Price:	Notes may be issued on a fully-paid or partly-paid basis at an issue price which is at par or a discount to, or a premium over, par.
Terms of Notes:	Notes may be denominated in any currency specified in the relevant Final Terms with any agreed maturity, subject to compliance with all applicable legal and/or regulatory restrictions. Notes with maturities of 183 days or less will have a minimum denomination of US\$500,000 (or its equivalent in other currencies).

Notes may: (i) bear interest at a fixed or floating rate; (ii) not bear interest; (iii) bear interest and/or provide that the redemption amount is calculated by reference to one or more specified underlying assets or bases of reference such as indices (including equity, bond, commodity or inflation indices), currency exchange rates, shares (including GDRs and/or ADRs), fund shares or units, commodities or the credit of one or more underlying entities; (iv) be redeemed by physical delivery ("**Physical Delivery Notes**") of specified asset(s) (each such underlying asset or basis of reference, a "**Reference Item**" and any Reference Item Linked Notes, "**Reference Item Linked Securities**"), (v) reference any combination of the foregoing; and/or (vi) have such other terms and conditions as specified in the applicable Final Terms.

Interest periods, interest rates and the terms of and/or amounts payable on redemption will be specified in the applicable Final Terms.

The Final Terms will indicate either that the relevant Notes may not be redeemed prior to their stated maturity (other than in specified instalments, (if applicable); for taxation reasons, following an Event of Default and acceleration of the Notes, or (if applicable) following an Additional Disruption Event), or that such Notes will be redeemable at the option of the Issuer and/or the Noteholders.

**Physical Delivery Notes:**

In order to receive the relevant asset(s), a Noteholder must deliver an Asset Transfer Notice on or prior to a specified cut-off time and pay all taxes, duties and/or expenses arising from delivery. For certain Reference Item Linked Notes, if certain disruption events occur on settlement, the relevant settlement date may be postponed and in certain circumstances the Issuer will be entitled to make payment of a cash amount in lieu of physical delivery.

The Guarantee provides that, in the case of Physical Delivery Notes, ML&Co. will have the right to elect not to make physical delivery, but rather to pay cash as specified in the applicable Final Terms.

**Negative Pledge:**

Terms of the Notes contain a negative pledge provision relating to indebtedness for borrowed money of ML&Co. or its subsidiaries secured by a pledge of, lien on or security interest in certain types of stock of certain subsidiaries.

**Events of Default:**

Terms of the Notes contain, among others, events of default covering non-payment or non-delivery and relating to the insolvency of the Issuer and ML&Co.

**Taxation:**

The Issuer or the Guarantor will, subject to certain limitations and exceptions (set forth in Condition 7 of the Terms and Conditions of the Notes), pay to Noteholders who are United States Aliens or a Luxembourg Non-resident (each as defined in Condition 7 of the Terms and Conditions of the Notes) such additional amounts as may be necessary so that every net payment of principal or interest or other amount with respect to the Notes or the Guarantee after deduction or withholding for or on account of any present or future tax, assessment or other governmental charge imposed upon such Noteholders or by reason of the making of such payment, by the United States or Luxembourg or any political subdivision or taxing authority of or in the United States or Luxembourg, as the case may be, and will not be less than the amount provided for in the Notes or the Guarantee to be

then due and payable, except as provided in Condition 7 of the Terms and Conditions of the Notes.

**In respect of W&C Securities:**

Issuers:	MLSA (in respect of Certificates only) MLICo. (in respect of Warrants and Certificates)
Dealer:	Merrill Lynch International
Principal Security Agent (for Warrants and Certificates issued by MLICo.):	The Bank of New York Mellon, London Branch
Principal Security Agent (for Certificates issued by MLSA):	BNP Paribas Securities Services S.A., Frankfurt Branch
Issue Price:	Securities may be issued at such price as shall be determined by the relevant Issuer or Manager appointed in respect of the issue.
Terms of W&C Securities:	<p>MLSA may from time to time issue Certificates and MLICo. may from time to time issue Warrants and Certificates of any kind, including but not limited to Warrants or Certificates linked to one or more underlying assets or bases of reference such as indices (including equity, bond, commodity or inflation indices), currency exchange rates, shares (including GDRs and/or ADRs), fund shares or units, commodities or (in the case of Certificates) the credit of one or more underlying entities (each such underlying asset or basis of reference, a "<b>Reference Item</b>" and any Reference Item linked W&amp;C Securities, "<b>Reference Item Linked Securities</b>") or any combination of the foregoing and on such terms as may be determined by the relevant Issuer and specified in the applicable Final Terms.</p> <p>W&amp;C Securities may or may not pay additional amounts as specified in the applicable Final Terms.</p>
Settlement:	<p>Settlement may be by way of cash payment ("<b>Cash Settled</b>") or physical delivery ("<b>Physical Delivery</b>"). Warrants sold in the United States or to, or for the account or benefit of U.S. persons who are QIBs and also QPs, and Swedish Securities, will be Cash Settled only. For certain Physical Delivery W&amp;C Securities, if certain disruption events occur on settlement, the relevant settlement date may be postponed and in certain circumstances the relevant Issuer will be entitled to make payment of a cash amount in lieu of physical delivery.</p> <p>The Guarantee provides that, in the case of Physical Delivery W&amp;C Securities, ML&amp;Co. will have the right to elect not to make physical delivery, but rather to pay cash as specified in the applicable Final Terms.</p>
Exercise Rights:	<p>European Style Warrants are only exercisable on the Exercise Date.</p> <p>American Style Warrants are exercisable on any Exercise Business Day during the Exercise Period.</p> <p>The applicable Final Terms will specify whether or not Warrants will be automatically exercised.</p>



The applicable Final Terms will specify if Warrants may be automatically exercised early (as a result of an Issuer Call, a mandatory early exercise or Holder put).

Certificates will be automatically exercised on the Exercise Date. In the case of Physical Delivery Certificates in order to receive the Entitlement in respect of a Certificate, the Holder must deliver a Collection Notice prior to a specified cut-off time and pay all taxes, duties and/or expenses arising from such delivery.

The applicable Final Terms will specify if the Exercise Date for Certificates may be brought forward (as a result of an Issuer Call, a mandatory early exercise or a Holder put).

**Expenses and Taxation:**

A holder of a W&C Security must pay all taxes, duties and/or expenses arising from the exercise and settlement of such W&C Security and/or if applicable, delivery of the Entitlement. The Issuer shall not be liable for tax, duty, withholding or other payment which may arise as a result of the ownership, transfer, exercise or enforcement of any W&C Security and all payments will be made subject to any such tax, duty, withholding or other payment.

**Reference Item Linked Securities**

**Index Linked Securities:**

Amounts payable in respect of Index Linked Securities will be calculated by reference to one or more Indices. The index may reference or comprise reference equities, bonds, property, currency exchange rates or other assets or bases of reference.

Index Linked Securities may be subject to early redemption or cancellation, as applicable, or adjustment if an Index is modified or cancelled and there is no successor index acceptable to the Calculation Agent, if the Index's Sponsor fails to calculate and announce the Index, if certain market disruption events occur, or if certain events (such as illegality, disruptions or cost increases) occur with respect to the relevant Issuer's or any Affiliate's hedging arrangements.

If certain disruption events occur with respect to valuation of an Index such valuation will be postponed and may be made by the Calculation Agent. Payments may also be postponed.

**Share Linked Securities:**

Amounts payable in respect of Share Linked Securities will be calculated by reference to a single share or basket of shares. Share Linked Securities may also provide for settlement by physical delivery of a specified amount of shares of one or more companies, subject to payment of the Exercise Price (in case of Warrants) and any other sums payable.

Share Linked Securities may, at the discretion of the relevant Issuer, be subject to early redemption or cancellation, as applicable, or adjustment (including valuation and in certain circumstances Share substitutions) if certain corporate events (such as events affecting the value of a Share (including Share divisions or consolidations, extraordinary dividends and capital calls), de-listing of a Share, insolvency, merger or nationalisation of a Share issuer; a tender offer or redenomination of a Share) occur, if certain events (such as

illegality, disruptions or cost increases) occur with respect to the relevant Issuer's and/or any Affiliate's hedging arrangements, or if insolvency filings are made with respect to a Share issuer.

If certain disruption events occur with respect to valuation of a Share, such valuation will be postponed and may be made by the Calculation Agent. Payments may also be postponed.

**Debt Linked Securities:**

Amounts payable in respect of Debt Linked Securities will be calculated by reference to a single debt instrument or basket of debt instruments. Debt Linked Securities may also provide for settlement by physical delivery of a specified amount of debt instruments of one or more issuers, as applicable, subject to payment of the relevant Exercise Price (in the case of Warrants) and any other sums payable.

Certain disruption events affecting trading on exchanges on which the relevant Debt Instrument(s) or options contracts or futures contracts with respect to the Debt Instrument(s) are traded may occur with respect to Debt Linked Securities.

**GDR/ADR Linked Securities:**

Amounts payable in respect of GDR/ADR Linked Securities will be calculated by reference to a single global depositary receipt ("GDRs") or American depositary receipts ("ADRs") or a basket of GDRs and/or ADRs. GDR/ADR Linked Securities may also provide for settlement by physical delivery of a specified amount of GDRs and/or ADRs subject to payment of the relevant Exercise Price (in the case of Warrants) and any other sums payable.

GDR/ADR Linked Securities may, at the discretion of the relevant Issuer, be subject to early redemption or cancellation, as applicable, or adjustment (including valuation and in certain circumstances GDR/ADR substitutions) if certain corporate events (such as events affecting the value of a GDR and/or ADR (including GDR, ADR or underlying share divisions or consolidations, extraordinary dividends and capital calls), de-listing of a GDR, ADR or underlying share, insolvency, merger or nationalisation of an underlying share issuer, a tender offer or redenomination of a GDR, ADR and/or underlying share) occur, if certain events (such as illegality, disruptions or cost increases) occur with respect to the relevant Issuer's and/or any Affiliate's hedging arrangements, or if insolvency filings are made with respect to an underlying share issuer.

**FX Linked Securities:**

Amounts payable in respect of FX Linked Securities will be calculated by reference to the rate of exchange of a single currency or basket of currencies. FX Linked Securities may also provide for settlement by physical delivery of a specified amount of the relevant currencies, subject to payment of the relevant Exercise Price (in the case of Warrants) and any other sums payable.

If certain disruption events occur with respect to a rate of exchange of a single currency or basket of currencies, such valuation may be postponed and/or made by the Calculation Agent.

**Commodity Linked Securities:**

Amounts payable in respect of Commodity Linked Securities will be calculated by reference to a single commodity and/or commodity index or basket of commodities and/or commodity indices. Commodity Linked Securities may also provide for settlement by physical delivery

of a specified amount of commodities, subject to payment of the relevant Exercise Price (in the case of Warrants) and any other sums payable.

If certain disruption events occur with respect to valuation of a Commodity or futures or options contracts relating to such commodity, such valuation may be postponed and/or made by the Calculation Agent. Commodity Linked Securities linked to a commodity index may be subject to adjustment if the index is modified or cancelled and there is no successor acceptable to the Calculation Agent or if the index's sponsor fails to calculate and announce the index.

#### **Fund Linked Securities:**

Amounts payable in respect of Fund Linked Securities will be calculated by reference to units, interests or shares in a single fund or basket of funds. Fund Linked Securities may also provide for settlement by physical delivery of a specified amount of units, interests or shares of one or more Funds, subject to payment of the relevant Exercise Price (in the case of Warrants) and any other sums payable.

Fund Linked Securities may, at the discretion of the relevant Issuer, be subject to early redemption or cancellation, as applicable, or adjustment (including as to valuations and fund substitutions) if certain corporate events (such as insolvency (or an analogous event) or nationalisation of a Fund; litigation against, or regulatory events occurring with respect to a Fund, suspensions of Fund subscriptions or redemptions, certain changes in net asset value or violations of leverage restrictions of a Fund, Fund reporting disruptions, or modifications to the investment objectives or changes in the nature or administration of a Fund) occur, if certain valuation or settlement disruption events occur with respect to a Fund, or if certain events (such as illegality, disruptions or cost increases) occur with respect to the relevant Issuer's or Affiliate's hedging arrangements.

Fund Linked Securities linked to Exchange Traded Funds may be subject to early redemption or cancellation, as applicable, or adjustment (including as to valuation) if certain corporate events (such as events affecting the value of a Fund Share including share divisions or consolidation, de-listing of a Fund Share, insolvency, merger or nationalisation of a Fund Share issuer, or a tender offer of a Fund Share) or modifications of its investment objectives occur or if certain events occur with respect to the Issuer's or Affiliate's hedging arrangements.

If certain disruption events occur with respect to the valuation of a Fund Share in respect of an Exchange Traded Fund, such valuation may be postponed and may be made by the Calculation Agent. Payments may also be postponed.

#### **Inflation Linked Securities:**

Amounts payable in respect of Inflation Linked Securities will be calculated by reference to a single inflation index or basket of inflation indices.

Inflation Linked Securities may be subject to early redemption or cancellation, as applicable, and/or adjustment if an Inflation Index is modified or cancelled and there is no successor index acceptable to the Calculation Agent, or if the Inflation Index Sponsor fails to calculate

and announce the Index.

**Credit Linked Notes and  
Certificates:**

Amounts payable in respect of Credit Linked Notes and Certificates will be calculated by reference to the credit of a specified entity or entities.

If Conditions to Settlement are satisfied during the Notice Delivery Period, the Credit Linked Notes or Certificates will be redeemed or cancelled, as the case may be, and the Issuer will pay the Credit Event Redemption Amount, if Conditions to Settlement - Cash Settlement is specified in the applicable Final Terms, or Deliver the Deliverable Obligations comprising the Entitlement, if Conditions to Settlement - Physical Delivery is specified in the applicable Final Terms.

**General**

**Status of the Securities:**

Securities constitute direct, unsubordinated, unconditional and unsecured obligations of the relevant Issuer and rank equally among themselves and rank equally (subject to such exceptions as are from time to time provided by applicable laws) with all other present and future direct, unsubordinated, unconditional and unsecured indebtedness (in the case of Notes) or obligations (in the case of W&C Securities) of the relevant Issuer.

**Status of the Guarantee:**

The obligations of ML&Co. under the Guarantee, save for such exceptions as may be provided by applicable legislation or judicial order, rank *pari passu* with its other present and future unsecured and unsubordinated indebtedness.

**Approval, listing and admission to  
trading:**

Application has been made to the CSSF to approve this document as a base prospectus. Application has also been made to the Luxembourg Stock Exchange for Securities issued under the Programme to be admitted to trading on the Luxembourg Stock Exchange's regulated market and to be listed on the Official List of the Luxembourg Stock Exchange. Application has also been made to the Luxembourg Stock Exchange for Securities issued under the Programme during the 12 months from the date of this Base Prospectus to be admitted to trading on the Luxembourg Stock Exchange's alternative market – Euro MTF – and to be listed on the Official List of the Luxembourg Stock Exchange.

Securities may be listed or admitted to trading, as the case may be, on such other or further stock exchange(s) or market(s) as determined by the relevant Issuer. Securities which are neither listed nor admitted to trading on any market may also be issued.

**Governing law:**

The Securities and any non-contractual obligations arising out of or in connection with them will be governed by, and construed in accordance with, English law. The Guarantee will be governed by, and construed in accordance with, the laws of the State of New York.

**Rating:**

If any issue of Notes under the Programme is to be rated, the rating of such Notes will be specified in the applicable Final Terms. Such rating will not necessarily be the same as the rating(s) assigned to the Programme. A rating is not a recommendation to buy, sell or hold securities and may be subject to suspension, reduction or withdrawal at

any time by the assigning rating agency.

**Selling Restrictions:**

There are restrictions on the offer, sale and transfer of the Securities in the United States, the European Economic Area (including Luxembourg, the United Kingdom, France and Italy), Japan, Singapore and the Netherlands Antilles and such other restrictions as may be required in connection with the offering and sale of a particular series of Securities, see "*Offering and Sale*".

**Risk Factors:**

Certain factors that may affect the relevant Issuer's ability to fulfil its obligations under the Securities and that are material for the purposes of assessing the risks associated with investing in the Securities are specified under "Risk Factors" and include market risk, credit risk, risks relating to the commodities business, international risk, liquidity risk, operational risk, litigation risk, regulatory and legislative risk, competitive risk, effect of credit rating reduction, structural risks relating to particular Securities, including with respect to Reference Item Linked Securities, risks relating to unsecured obligations, market disruption, settlement disruption, failure to deliver due to illiquidity, expenses and taxation, no claim against the Reference Item, modification, meetings, hedging and potential conflicts of interest, physical delivery requirements and settlement risk, illegality and cancellation, partly-paid Notes, optional redemption (in the case of Notes), minimum denomination (in the case of Notes), factors affecting the value and trading price of W&C Securities, time lag after exercise (in the case of Warrants), minimum exercise amount (in the case of Warrants) limitations on exercise (in the case of Warrants), Rule 144A Warrant transfer restrictions, possible illiquidity of Securities, exchange rate risks and exchange listing and legal regulation risk.

**Risks Relating To Merrill Lynch's<sup>1</sup> Business**

*Market Risk.* Merrill Lynch is exposed to changes in the value of financial instruments caused by fluctuations in interest and currency exchange rates, equity and commodity prices, credit spreads, and/or other risks resulting from changes in economic conditions, investor sentiment, monetary and fiscal policies, the liquidity of global markets, availability and cost of capital, and rating agencies' actions. Merrill Lynch has incurred losses and may incur additional losses as a result of increased market volatility or decreased market liquidity. A decline in volatility may adversely affect the results in Merrill Lynch's trading businesses.

Merrill Lynch recorded significant net write-downs in 2007, primarily related to U.S. ABS CDOs, sub-prime residential mortgages and credit valuation adjustments related to hedging transactions with financial guarantors on U.S. ABS CDOs. The markets for U.S. ABS CDOs and other subprime residential mortgage exposures remain extremely illiquid and as a result, valuation of these exposures is complex and will continue to be impacted by market factors. Merrill Lynch's ability to mitigate its risk by selling or hedging its exposures is limited by the market environment.

*Credit Risk.* Merrill Lynch is exposed to potential credit-related losses that can occur as a result of an individual, counterparty or issuer being

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<sup>1</sup> Unless the context otherwise requires, the term "Merrill Lynch" means ML&Co. and its consolidated subsidiaries.

unable or unwilling to honour its contractual obligations. These exposures may arise from a decline in the financial condition of a counterparty, entering into swap or other derivative contracts under which counterparties have obligations to make payments to Merrill Lynch, a decrease in the value of securities of third parties held by Merrill Lynch as collateral or extending credit to clients through loans or other arrangements.

*Risks Related to Merrill Lynch's Commodities Business.* Through its commodities business, Merrill Lynch enters into exchange-traded contracts, financially settled over-the-counter derivatives, contracts for physical delivery and contracts providing for the transportation, transmission and/or storage rights. Contracts relating to physical ownership, delivery and/or related activities can expose Merrill Lynch to numerous risks, including performance, environmental and reputational risks. Regulatory authorities have recently intensified scrutiny of certain energy markets, resulting in increased regulatory and legal enforcement, litigation and remedial proceedings involving companies engaged in activities in which Merrill Lynch is engaged.

*International Risk.* In past years, Merrill Lynch has expanded its international operations, and expects to continue to do so, which gives it greater exposure to a number of risks, including economic, market, reputational, litigation and regulatory risks.

*Liquidity Risk.* Merrill Lynch's liquidity may be impaired due to circumstances beyond its control, such as general market disruptions (including for a specific asset class), any disruption requiring Merrill Lynch to honour commitments to provide liquidity to off-balance sheet vehicles, or an operational problem that affects its trading clients or itself. The inability to borrow funds or sell assets to meet obligations, a negative change in credit ratings that would have an adverse effect on its ability to borrow funds, increases in the amount of collateral required by counterparties, or regulatory capital restrictions imposed on the free flows of funds between Merrill Lynch and its affiliates, may have a negative effect on its business and financial condition.

*Operational Risk.* Merrill Lynch's business may be adversely impacted by operational failures or unfavourable external events, including exposure to theft and fraud, improper business practices, client suitability and servicing risks, product complexity and pricing risk or from improper recording, evaluating or accounting for transactions. Merrill Lynch could suffer financial loss, disruption of its business, liability to clients, regulatory intervention or reputational damage from such events.

*Litigation Risk.* Legal proceedings could adversely affect Merrill Lynch's operating results and financial condition for a particular period and impact its credit ratings. Merrill Lynch has been named as a defendant in various legal actions, including investigations and/or proceedings by governmental and self-regulatory agencies. Some legal actions include claims for substantial compensatory and/or punitive damages or claims for indeterminate amounts of damages. Some are likely to result in adverse judgments, penalties, injunctions, fines or other relief. Any prolonged decline in securities prices may lead to increased actions against Merrill Lynch and increased legal expenses

and potential liability.

*Regulatory and Legislative Risk.* Merrill Lynch's businesses may be affected by various regulatory and exchange authorities, self-regulatory organisations and industry participants that continue to review and adopt changes to their established rules and policies.

*Competitive Environment.* Competitive pressures could adversely affect Merrill Lynch's business, which competes globally for clients with commercial banks and other broker-dealers in brokerage (where it has experienced intense price competition), underwriting, trading, financing and advisory businesses. Many of its non-U.S. competitors may have competitive advantages in their home markets.

PROSPECTIVE INVESTORS MUST REVIEW THE APPLICABLE FINAL TERMS TO ASCERTAIN WHAT THE RELEVANT REFERENCE ITEM(S) ARE AND TO SEE HOW THE AMOUNT PAYABLE AND/OR DELIVERABLE ON THE SECURITIES AND ANY PERIODIC INTEREST PAYMENTS (IN THE CASE OF NOTES) OR ADDITIONAL AMOUNT PAYMENTS (IN THE CASE OF W&C CERTIFICATES) ARE DETERMINED AND WHEN SUCH AMOUNTS ARE PAYABLE AND/OR DELIVERABLE, AS THE CASE MAY BE, BEFORE MAKING ANY DECISION TO PURCHASE ANY SECURITIES.

## **RISK FACTORS**

*Each of MLSA, MLICo. and ML&Co. believes that the following factors may affect its ability to fulfil its obligations in respect of Securities issued under the Programme and/or are material for the purpose of assessing the market risks associated with Securities issued under the Programme. All of these factors are contingencies which may or may not occur and none of MLSA, MLICo. or ML&Co. is in a position to express a view on the likelihood of any such contingency occurring.*

*In addition, factors which are material for the purpose of assessing the market risks associated with Securities issued under the Programme are also described below.*

*Each of MLSA, MLICo. and ML&Co. believes that the factors described below represent the principal risks inherent in investing in Securities issued under the Programme, but the inability of the relevant Issuer or ML&Co. to pay any cash amounts in connection with any Cash Settled Securities ("**Cash Settled Securities**") or to deliver the Entitlement in connection with any Physical Delivery Securities ("**Physical Delivery Securities**") may occur for other reasons and neither the Issuers nor ML&Co. represents that the statements below regarding the risks of holding any Securities are exhaustive. Additional risks and uncertainties not presently known to any of MLSA, MLICo. or ML&Co. or that any of MLSA, MLICo. or ML&Co. currently believes to be immaterial could also have a material impact on its business operations or the Securities. The Final Terms in respect of an issue of Securities may contain additional Risk Factors in respect of such Securities. Prospective investors should also read the detailed information set out elsewhere in this Base Prospectus and reach their own views prior to making any investment decision.*

*Terms used in this section and not otherwise defined shall have the meanings given to them in the "Terms and Conditions of the Notes" or the "Terms and Conditions of the W&C Securities", as applicable (together the "Conditions" and references herein to "relevant Conditions" shall be construed accordingly).*

### **Factors that may affect the relevant Issuer's ability to fulfil its obligations under Securities issued under the Programme**

The Issuers are finance vehicles whose principal purposes are to raise debt or enter into financial contracts to assist the financing activities of the relevant Issuer's affiliates. Accordingly, the Issuers do not have any trading assets and do not generate any significant net income.

MLICo. engages primarily in the issuance of warrants and related financial instruments and the distribution of Merrill Lynch managed funds world-wide (with the exception of North America) and other managed fund products.

The main markets in which MLSA sells securities are the Eurobond markets.

Securities issued under the Programme are guaranteed on an unsubordinated basis pursuant to a Guarantee. Accordingly, if the Guarantor's financial condition were to deteriorate, the Issuers and investors in the Securities may suffer direct and materially adverse consequences. Accordingly, prospective investors in Securities should review, *inter alia*, the factors below in respect of ML&Co.'s ability to fulfil its obligations under the Guarantee.

### **Factors that may affect ML&Co.'s ability to fulfil its obligations under the Guarantee**

ML&Co. is the holding company for Merrill Lynch\*. ML&Co.'s ability to fulfil its obligations under the Guarantee may therefore be affected by certain factors as set out below which may affect Merrill Lynch.

### **Risks Relating to Merrill Lynch's Business**

In the course of conducting its business operations, Merrill Lynch is exposed to a variety of risks that are inherent to the financial services industry. A summary of some of the significant risks that could affect Merrill Lynch's financial condition and results of operations is included below. Some of these risks are managed in accordance with established risk management policies and procedures, most of which are described in the Risk Management section under the heading "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in the 2007 Annual Report and the Quarterly Reports on Form 10-Q of ML&Co.

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\* Unless the context otherwise requires, the term "Merrill Lynch" means ML&Co. and its consolidated subsidiaries.



## **Market Risk**

*Merrill Lynch's business may be adversely impacted by global market and economic conditions that may cause fluctuations in interest rates, exchange rates, equity and commodity prices and credit spreads.*

Merrill Lynch is exposed to potential changes in the value of financial instruments caused by fluctuations in interest rates, currency exchange rates, equity and commodity prices, credit spreads, and/or other risks. These fluctuations may result from changes in economic conditions, investor sentiment, monetary and fiscal policies, the liquidity of global markets, availability and cost of capital, the actions of credit rating agencies, international and regional political events and acts of war or terrorism. Merrill Lynch has large proprietary trading and investment positions, which include positions in fixed income, currency, commodities and equity securities, as well as in real estate, private equity and other investments. Merrill Lynch has incurred losses and may incur additional losses as a result of increased market volatility or decreased market liquidity, as these fluctuations may adversely impact the valuation of its trading and investment positions. Conversely, a decline in volatility may adversely affect the results in Merrill Lynch's trading businesses, which depend on market volatility to create client and proprietary trading opportunities.

*Merrill Lynch may incur additional material losses in future periods due to write-downs in the value of financial instruments.*

Merrill Lynch recorded significant net write-downs in the 2007 fiscal year, primarily related to U.S. collateralised debt obligations comprising of asset-backed securities ("U.S. ABS CDOs"), sub-prime residential mortgages, and credit valuation adjustments related to hedging transactions with financial guarantors on U.S. ABS CDOs. The markets for U.S. ABS CDOs and other sub-prime residential mortgage exposures remain extremely illiquid and as a result, valuation of these exposures is complex and involves a comprehensive process including the use of quantitative modelling and management judgment. Valuation of these exposures will also continue to be impacted by external market factors including default rates, a decline in the value of the underlying property, such as residential or commercial real estate, rating agency actions, the prices at which observable market transactions occur and the financial strength of counterparties, such as financial guarantors, with whom Merrill Lynch has economically hedged some of its exposure to these assets. Merrill Lynch's ability to mitigate its risk by selling or hedging its exposures is also limited by the market environment.

*Merrill Lynch's business has been and may be adversely impacted by significant holdings of financial assets or significant loans or commitments to extend loans.*

In the course of Merrill Lynch's business, Merrill Lynch often commits substantial amounts of capital to certain types of businesses or asset classes, including Merrill Lynch's trading, structured credit, residential and commercial real estate-related activities, investment banking, private equity and leveraged finance businesses. This commitment of capital exposes Merrill Lynch to a number of risks, including market risk, in the case of Merrill Lynch's holdings of concentrated or illiquid positions in a particular asset class as part of its trading, structured credit, residential and commercial real estate-related activities, and credit risk, in the case of its leveraged lending businesses. Any decline in the value of such assets may reduce Merrill Lynch's revenues or result in losses.

## **Credit Risk**

*Merrill Lynch's business may be adversely impacted by an increase in its credit exposure related to trading, lending, and other business activities.*

Merrill Lynch is exposed to potential credit-related losses that can occur as a result of an individual, counterparty or issuer being unable or unwilling to honour its contractual obligations. These credit exposures exist within lending relationships, commitments, letters of credit, derivatives, including transactions Merrill Lynch may enter into to hedge its exposure to various assets, foreign exchange and other transactions. These exposures may arise, for example, from a decline in the financial condition of a counterparty, from entering into swap or other derivative contracts under which counterparties have obligations to make payments to Merrill Lynch, from a decrease in the value of securities of third parties held by Merrill Lynch as collateral or from extending credit to clients through loans or other arrangements. As

Merrill Lynch's credit exposure increases, it could have an adverse effect on its business and profitability if material unexpected credit losses occur.

### ***Risks Related to Merrill Lynch's Commodities Business***

*Merrill Lynch is exposed to environmental, reputational and regulatory risk as a result of its commodities related activities.*

Through Merrill Lynch's commodities business, Merrill Lynch enters into exchange-traded contracts, financially settled over-the-counter derivatives, contracts for physical delivery and contracts providing for the transportation, transmission and/or storage rights on or in vessels, barges, pipelines, transmission lines or storage facilities. Contracts relating to physical ownership, delivery and/or related activities can expose Merrill Lynch to numerous risks, including performance, environmental and reputational risks. For example, Merrill Lynch may incur civil or criminal liability under certain environmental laws and Merrill Lynch's business and reputation may be adversely affected. In addition, regulatory authorities have recently intensified scrutiny of certain energy markets, which has resulted in increased regulatory and legal enforcement, litigation and remedial proceedings involving companies engaged in the activities in which Merrill Lynch is engaged.

### ***International Risk***

*Merrill Lynch has an increasing international presence and as a result, Merrill Lynch is increasingly subject to a number of risks in various jurisdictions.*

In the past years, Merrill Lynch has expanded its international operations and expects to continue to do so in the future. This expansion, however, gives Merrill Lynch a greater exposure to a number of risks, including economic, market, reputational, litigation and regulatory risks. For example, in many emerging markets, the regulatory regime governing financial services firms is still developing, and the regulatory authorities may adopt restrictive regulation or policies, such as exchange, price or capital controls, that could have an adverse effect on Merrill Lynch's businesses. In addition, in virtually all markets, Merrill Lynch is competing with a number of established competitors that in some cases may have significant competitive advantages over Merrill Lynch in those markets.

### ***Liquidity Risk***

*Merrill Lynch's business and financial condition may be adversely impacted by an inability to borrow funds or sell assets to meet its obligations.*

Financial services firms, including Merrill Lynch, are exposed to liquidity risk, which is the potential inability to repay short-term borrowings with new borrowings or liquid assets that can be quickly converted into cash while meeting other obligations and continuing to operate as a going concern. Merrill Lynch's liquidity may be impaired due to circumstances that it may be unable to control, such as general market disruptions, disruptions in the markets for any specific class of assets, including any disruption that would require Merrill Lynch to honour commitments to provide liquidity to certain off-balance sheet vehicles, or an operational problem that affects its trading clients or itself. Merrill Lynch's ability to sell assets may also be impaired if other market participants are seeking to sell similar assets at the same time. The inability of Merrill Lynch to borrow funds or sell assets to meet obligations, a negative change in its credit ratings that would have an adverse effect on its ability to borrow funds, increases in the amount of collateral required by counterparties, or regulatory capital restrictions imposed on the free flows of funds between Merrill Lynch and its affiliates, may have a negative effect on its business and financial condition.

### ***Operational Risk***

*Merrill Lynch may incur losses due to the failure of people, internal processes and systems or from external events.*

Merrill Lynch's business may be adversely impacted by operational failures or from unfavourable external events. Such operational risks may include exposure to theft and fraud, improper business practices, client suitability and servicing risks, product complexity and pricing risk or from improper recording, evaluating or accounting for transactions. Merrill Lynch could suffer financial loss, disruption of its business, liability to

clients, regulatory intervention or reputational damage from such events, which would affect its business and financial condition.

### ***Litigation Risk***

*Legal proceedings could adversely affect Merrill Lynch's operating results for a particular period and impact its credit ratings.*

Merrill Lynch has been named as a defendant in various legal actions, including arbitrations, class actions, and other litigation arising in connection with its activities as a global diversified financial services institution. Some of the legal actions against Merrill Lynch include claims for substantial compensatory and/or punitive damages or claims for indeterminate amounts of damages. Any prolonged decline in securities prices may lead to increased actions against many firms, including Merrill Lynch, and may lead to increased legal expenses and potential liability. In some cases, the issuers who would otherwise be the primary defendants are bankrupt or otherwise in financial distress. Given the number of these matters, some are likely to result in adverse judgments, penalties, injunctions, fines, or other relief. Merrill Lynch is also involved in investigations and/or proceedings by governmental and self-regulatory agencies.

Merrill Lynch may explore potential settlements before a case is taken through trial because of uncertainty, risks and costs inherent in the litigation process. In accordance with Statement of Financial Accounting Standards No. 5, Accounting for Contingencies ("SFAS No.5"), Merrill Lynch will accrue a liability when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In many lawsuits, arbitrations and investigations, including almost all of the class action lawsuits disclosed under "General Information – Litigation", it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the matter is close to resolution, in which case no accrual is made until that time. In view of the inherent difficulty of predicting the outcome of such matters, particularly in matters in which claimants seek substantial or indeterminate damages, Merrill Lynch cannot predict what the eventual loss or range of loss related to such matters will be. Potential losses may be material to Merrill Lynch's operating results for any particular period and may impact ML&Co.'s credit ratings. For further information about Merrill Lynch's legal and regulatory investigations and proceedings, see "General Information – Litigation".

### ***Regulatory and Legislative Risks***

*Many of Merrill Lynch's businesses are highly regulated and could be impacted, and in some instances adversely impacted, by regulatory and legislative initiatives around the world.*

Merrill Lynch's businesses may be affected by various U.S. and non-U.S. legislative bodies and regulatory and exchange authorities, such as federal and state securities and bank regulators including the United States Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, and the Utah Department of Finance Institutions; and self-regulatory organisations including the Financial Industry Regulatory Authority, The Commodity Futures Trading Commission, the Financial Services Authority, the Japan Financial Services Agency and the Irish Financial Regulator; and industry participants that continue to review and, in many cases, adopt changes to their established rules and policies. New laws or regulations or changes in the enforcement of existing laws and regulations may also adversely affect Merrill Lynch's businesses. As Merrill Lynch expands globally, Merrill Lynch will encounter new laws, regulations and requirements that could impact its ability to operate in new local markets.

### ***Competitive Environment***

*Competitive pressures in the financial services industry could adversely affect Merrill Lynch's business and results of operations.*

Merrill Lynch competes globally for clients on the basis of price, the range of products that it offers, the quality of its services, its financial resources, and product and service innovation. The financial services industry continues to be affected by an intensely competitive environment, as demonstrated by the introduction of new technology platforms, consolidation through mergers, increased competition from new and established industry participants and diminishing margins in many mature products and services. Merrill Lynch competes with U.S. and non-U.S. commercial banks and other broker-dealers in brokerage, underwriting, trading, financing and advisory businesses. For example, the financial services industry in

general, including Merrill Lynch, has experienced intense price competition in brokerage, as the ability to execute trades electronically, through the internet and through other alternative trading systems has pressured trading commissions and spreads. Many of Merrill Lynch's non-U.S. competitors may have competitive advantages in their home markets. In addition, Merrill Lynch's business is substantially dependent on its continuing ability to compete effectively to attract and retain qualified employees, including successful financial advisers, investment bankers, trading and risk management professionals and other revenue-producing or support personnel.

**Factors which are material for the purpose of assessing the market risks associated with Securities issued under the Programme**

***Effect of Credit Rating Reduction***

The value of the Securities is expected to be affected, in part, by investors' general appraisal of ML&Co.'s creditworthiness. Such perceptions are generally influenced by the ratings accorded to ML&Co.'s outstanding securities by standard statistical rating services, such as Moody's Investors Service Inc. and Standard & Poor's, a division of The McGraw-Hill Companies, Inc. A reduction in the rating, if any, accorded to outstanding debt securities of ML&Co., by one of these rating agencies could result in a reduction in the trading value of the Securities.

***Current Market***

Investors should be aware of the prevailing and widely reported global credit market conditions (which continue at the date of this Base Prospectus), whereby there is a general lack of liquidity in the secondary market for instruments similar to the Securities. Such lack of liquidity may result in investors suffering losses on the Securities in secondary resales even if there is no decline in the performance of the assets of Merrill Lynch. Merrill Lynch cannot predict when these circumstances will change and whether, if and when they do change, there will be a more liquid market for the Securities at that time.

***The Securities may not be a suitable investment for all investors***

Each potential investor in the Securities must determine the suitability of that investment in light of its own circumstances. In particular, each potential investor should:

- (i) have sufficient knowledge and experience to evaluate the Securities, the merits and risks of investing in the Securities and the information contained or incorporated by reference in this Base Prospectus or any applicable supplement and all the information contained in the applicable Final Terms;
- (ii) have access to, and knowledge of, appropriate analytical tools to evaluate, in the context of its particular financial situation, an investment in the Securities and the impact the Securities will have on its overall investment portfolio;
- (iii) have sufficient financial resources and liquidity to bear all of the risks of an investment in the Securities, including Securities with amounts payable in one or more currencies, or where the Settlement Currency or Specified Currency of the Securities is different from the potential investor's currency;
- (iv) understand thoroughly the terms of the Securities and be familiar with any relevant indices and financial markets; and
- (v) be able to evaluate (either alone or with the help of a financial adviser) possible scenarios for economic, interest rate and other factors that may affect its investment and its ability to bear the applicable risks.

In addition, an investment in Index Linked Securities, Share Linked Securities, Debt Linked Securities, GDR/ADR Linked Securities, FX Linked Securities, Commodity Linked Securities, Fund Linked Securities, Inflation Linked Securities, Credit Linked Notes and Certificates or other Securities linked to other Reference Item(s) ("**Reference Item Linked Securities**"), may entail significant risks not associated with

investments in conventional securities such as debt or equity securities, including, but not limited to, the risks set out in *"Risks related to the structure of a particular issue of Securities"* set out below.

Some Securities are complex financial instruments. Sophisticated institutional investors generally do not purchase complex financial instruments as stand-alone investments. They purchase complex financial instruments as a way to reduce risk or enhance yield with an understood, measured, appropriate addition of risk to their overall portfolios. A potential investor should not invest in Securities which are complex financial instruments unless it has the expertise (either alone or with a financial adviser) to evaluate how such Securities will perform under changing conditions, the resulting effects on the value of those Securities and the impact this investment will have on the potential investor's overall investment portfolio.

#### ***Risks related to the structure of a particular issue of Securities***

A wide range of Securities may be issued under the Programme. A number of these Securities may have features which contain particular risks for potential investors. Set out below is a description of the most common features.

#### ***General risks and risks relating to Reference Item Linked Securities***

Reference Item Linked Securities involve a high degree of risk, which may include, among others, interest rate, foreign exchange, time value and political risks. Purchasers should be prepared to sustain a total loss of the purchase price of the Securities. This risk reflects the nature of such a Security as an asset which, other factors held constant, tends to decline in value over time and which may become worthless. See *"Certain Factors Affecting the Value and Trading Price of Securities"* below. Prospective purchasers of Securities should understand the risks of transactions involving the relevant Securities and should reach an investment decision only after careful consideration, with their advisers, of the suitability of such Securities in light of their particular financial circumstances, the information set forth herein and the information regarding the relevant Securities and the particular Reference Item to which the value of, or payments or deliveries in respect of, the relevant Securities may relate, as specified in the applicable Final Terms.

Reference Item Linked Securities will represent an investment linked to the economic performance of the relevant Reference Item(s) and prospective investors should note that the return (if any) on their investment in such Securities will depend upon the performance of such Reference Item(s). Potential investors should also note that whilst the market value of such Securities is linked to such Reference Item(s) and will be influenced (positively or negatively) by such Reference Item(s), any change may not be comparable and may be disproportionate. It is impossible to predict how the level of the relevant Reference Item(s) will vary over time. In contrast to a direct investment in the relevant Reference Item(s), Securities represent the right to receive payment or delivery, as the case may be, of the Cash Settlement Amount(s), the Final Redemption Amount(s) or the Entitlement, as the case may be, as well as periodic payments of interest (if specified in the applicable Final Terms in respect of Notes), all or some of which and the value of which will be determined by reference to the performance of the relevant Reference Item(s).

As the amounts payable and/or deliverable in respect of Reference Item Linked Securities are linked to the performance of the relevant Reference Item(s), a purchaser of such a Security must generally be correct about the direction, timing and magnitude of an anticipated change in the value of the relevant Reference Item(s). Assuming all other factors are held constant, the lower the value of such a Security and the shorter the remaining term to expiration (in the case of a Warrant), exercise (in the case of a Certificate) or redemption (in the case of a Note), the greater the risk that purchasers of such Security will lose all or part of their investment.

Reference Item Linked Notes may be principal protected or non-principal protected. Investors in Reference Item Linked Notes that are non-principal protected may risk losing their entire investment if the value of the relevant Reference Item(s) does not move in the anticipated direction.

**PROSPECTIVE INVESTORS MUST REVIEW THE APPLICABLE FINAL TERMS TO ASCERTAIN WHAT THE RELEVANT REFERENCE ITEM(S) ARE AND TO SEE HOW THE CASH SETTLEMENT AMOUNT, FINAL REDEMPTION AMOUNT OR THE ENTITLEMENT, AS THE CASE MAY BE, AND ANY PERIODIC INTEREST PAYMENTS (IN THE CASE OF NOTES) OR ANY PERIODIC ADDITIONAL AMOUNT PAYMENTS (IN THE CASE OF W&C**

**SECURITIES) ARE DETERMINED AND WHEN SUCH AMOUNTS ARE PAYABLE AND/OR DELIVERABLE, AS THE CASE MAY BE, BEFORE MAKING ANY DECISION TO PURCHASE ANY SECURITIES.**

Fluctuations in the value and/or volatility of the relevant Reference Item(s) will affect the value of the relevant Securities. Other factors which may influence the market value of Securities include interest rates, potential dividend or interest payments (as applicable) in respect of the relevant Reference Item(s), changes in the method of calculating the relevant Reference Item(s) from time to time and market expectations regarding the future performance of the relevant Reference Item(s), its composition and such Securities.

Each Issuer may issue several issues of Securities relating to a particular Reference Item. However, no assurance can be given that either Issuer will issue any such Securities other than the Securities to which particular Final Terms relate. At any given time, the number of Securities outstanding may be substantial. Securities provide opportunities for investment and pose risks to investors as a result of fluctuations in the value of the relevant Reference Item(s).

*Risks relating to Index Linked Securities*

Each Issuer may issue Index Linked Securities where the Final Redemption Amount, Cash Settlement Amount or interest payable is dependent upon the level of an index or indices. The index or indices may comprise of reference equities, bonds, other securities, property, currency exchange rate or other assets or bases of reference, and may be a well known and widely published index or indices or an index or indices established by Merrill Lynch or another entity which may not be widely published or available. An investment in Index Linked Securities will entail significant risks not associated with a conventional fixed rate or floating rate debt security.

Index Linked Redemption Notes may be redeemable by the Issuer by payment of the par value amount and/or by payment of an amount determined by reference to the value of the index/indices. Interest payable on Index Linked Interest Notes may be calculated by reference to the value of one or more indices.

Index Linked W&C Securities will be settled by payment of an amount determined by reference to the value of the index/indices.

Potential investors in Index Linked Securities should be aware that depending on the terms of the Index Linked Securities (i) they may receive no or a limited amount of interest, (ii) payments may occur at a different time than expected and (iii) except in the case of principally protected securities, they may lose all or a substantial portion of their investment if the value of the index/indices do not move in the anticipated direction.

In addition, the movements in the level of the index or indices may be subject to significant fluctuations that may not correlate with changes in interest rates, currencies or other indices and the timing of changes in the relevant level of the index or indices may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the level of an index or result of a formula, the greater the effect on yield.

If the Final Redemption Amount, Cash Settlement Amount or interest payable are determined in conjunction with a multiplier greater than one or by reference to some other leverage factor, the effect of changes in the level of the index or the indices on the Final Redemption Amount, Cash Settlement Amount or interest payable will be magnified.

If the Calculation Agent determines that an event giving rise to a Disrupted Day has occurred at any relevant time, such determination may have an effect on the timing of valuation and consequently the value of the Securities and/or may delay settlement in respect of the Securities. Prospective purchasers should review the relevant Terms and Conditions of the Securities and the applicable Final Terms to ascertain whether and how such provisions apply to the Securities.

The market price of Index Linked Securities may be volatile and may depend on the time remaining to the redemption date or exercise date (as applicable) and the volatility of the level of the index or indices. The level of the index or indices may be affected by the economic, financial and political events in one or more jurisdictions, including the stock exchange(s) or quotation system(s) on which any securities comprising the index or indices may be traded.

### *Risks relating to Share Linked Securities*

Each Issuer may issue Share Linked Securities where the Final Redemption Amount, Cash Settlement Amount, or interest payable are dependent upon the price of or changes in the price of shares or a basket of shares or where, depending on the price or change in the price of the shares or basket of shares, the relevant Issuer has an obligation to deliver specified assets. Accordingly, an investment in Share Linked Securities may bear similar market risks to a direct equity investment and investors should take advice accordingly. An investment in Share Linked Securities will entail significant risks not associated with a conventional debt security.

Share Linked Redemption Notes may be redeemable by the Issuer by payment of the par value amount and/or by the physical delivery of a given number of share(s) and/or by payment of an amount determined by reference to the value of the share(s).

Share Linked W&C Securities may be settled by the physical delivery of a given number of share(s) and/or by payment of an amount determined by reference to the value of the share(s).

Potential investors in Share Linked Securities should be aware that depending on the terms of the Share Linked Securities (i) they may receive no or a limited amount of interest, (ii) payments or delivery of any specified assets may occur at a different time than expected and (iii) except in the case of principally protected Securities, they may lose all or a substantial portion of their investment if the value of the share(s) do not move in the anticipated direction.

In addition, the movements in the price of the share or basket of shares may be subject to significant fluctuations that may not correlate with changes in interest rates, currencies or other indices and the timing of changes in the relevant price of the share or shares may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the price of the share or shares, the greater the effect on yield.

If the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, are determined in conjunction with a multiplier greater than one or by reference to some other leverage factor, the effect of changes in the price of the share or shares on the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, will be magnified.

If the Calculation Agent determines that an event giving rise to a Disrupted Day has occurred at any relevant time any such determination may have an effect on the timing of valuation and consequently the value of the Securities and/or may delay settlement in respect of the Securities. Prospective purchasers should review the relevant Terms and Conditions and the applicable Final Terms to ascertain whether and how such provisions apply to the Securities.

In the case of Share Linked Securities following the declaration by the Share Company of the terms of any Potential Adjustment Event, the Calculation Agent will, in its sole and absolute discretion, determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the Shares and, if so, will (i) make the corresponding adjustment, if any, to any of the terms of the relevant Conditions and/or the applicable Final Terms as the Calculation Agent in its sole and absolute discretion determines appropriate to account for that diluting or concentrative effect (provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Share) and (ii) determine the effective date of that adjustment. Such adjustment may have an adverse effect on the value and liquidity of the affected Share Linked Securities.

In addition, in the case of Share Linked Securities, if a Merger Event, Tender Offer, De-listing, Nationalisation or Insolvency occurs in relation to any Share, the relevant Issuer in its sole and absolute discretion may take the action described in (i) or (ii) below:

- (i) require the Calculation Agent to determine in its sole and absolute discretion the appropriate adjustment, if any, to be made to any of the relevant Conditions and/or the applicable Final Terms to account for the Merger Event, Tender Offer, De-listing, Nationalisation or Insolvency and determine the effective date of that adjustment. Such adjustment may have an adverse effect on the value and liquidity of the affected Share Linked Securities; and

- (ii) redeem or cancel, as applicable, part (in the case of Share Linked Securities relating to a basket of Shares) or all (in any other case) of the Securities. Following such redemption or cancellation an investor generally would not be able to reinvest the redemption proceeds at an effective interest rate as high as the interest rate on the relevant Securities being redeemed or cancelled and may only be able to do so at a significantly lower rate. Prospective investors should consider reinvestment risk in light of other investments available at that time.

The market price of Share Linked Securities may be volatile and may be affected by the time remaining to the redemption date or exercise date (as applicable), the volatility of the share or shares, the dividend rate (if any) and the financial results and prospects of the issuer or issuers of the relevant share or shares as well as economic, financial and political events in one or more jurisdictions, including factors affecting the stock exchange(s) or quotation system(s) on which any such shares may be traded.

No issuer of the relevant share(s) will have participated in the preparation of the relevant Final Terms or in establishing the terms of the Share Linked Securities and none of the relevant Issuer, ML&Co. or any Dealer will make any investigation or enquiry in connection with such offering with respect to any information concerning any such issuer of shares contained in such Final Terms or in the documents from which such information was extracted. Consequently, there can be no assurance that all events occurring prior to the relevant issue date (including events that would affect the accuracy or completeness of the publicly available information described in this paragraph or in any relevant Final Terms) that would affect the trading price of the share will have been publicly disclosed. Subsequent disclosure of any such events or the disclosure of or failure to disclose material future events concerning such an issuer of shares could affect the trading price of the share and therefore the trading price of the Securities.

Except as provided in the relevant Conditions in relation to Physical Delivery Securities, Holders of Share Linked Securities will not have voting rights or rights to receive dividends or distributions or any other rights with respect to the relevant shares to which such Securities relate.

#### *Risks relating to Debt Linked Securities*

Each Issuer may issue Debt Linked Securities where the Final Redemption Amount, Cash Settlement Amount or interest payable are dependent upon the value of the underlying debt instrument(s), or where, depending on the price of or change in the price of the underlying debt instruments, the relevant Issuer has an obligation to deliver specified assets. Accordingly, an investment in Debt Linked Securities may bear similar market risks to a direct debt instrument investment and investors should take advice accordingly. An investment in Debt Linked Securities will entail significant risks not associated with a conventional fixed rate or floating rate debt security.

Debt Linked Redemption Notes may be redeemable by the Issuer by payment of the par value amount and/or by the physical delivery of a given number of debt instrument(s) and/or by payment of an amount determined by reference to the value of the debt instrument(s). Interest payable on Debt Linked Interest Notes may be calculated by reference to the value of one or more debt instrument(s).

Debt Linked W&C Securities may be settled by the physical delivery of a given number of debt instrument(s) and/or by payment of an amount determined by reference to the value of the debt instrument(s).

Potential investors in Debt Linked Securities should be aware that depending on the terms of the Debt Linked Securities (i) they may receive no or a limited amount of interest, (ii) payments or delivery of any specified assets may occur at a different time than expected and (iii) except in the case of principally protected Securities, they may lose all or a substantial portion of their investment if the value of the debt instrument(s) do not move in the anticipated direction.

In addition, the movements in the price of the debt instrument(s) may be subject to significant fluctuations that may not correlate with changes in interest rates, currencies or other indices and the timing of changes in the relevant price of the debt instrument(s) may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the price of the debt instrument(s), the greater the effect on yield.



If the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, are determined in conjunction with a multiplier greater than one or by reference to some other leverage factor, the effect of changes in the price of the debt instrument(s) on the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, will be magnified.

The market price of Debt Linked Securities may be volatile and may be affected by the time remaining to the redemption date or exercise date (as applicable), the volatility of the debt instrument(s) and the financial results and prospects of the issuer or issuers of the relevant debt instrument(s) as well as economic, financial and political events in one or more jurisdictions, including factors affecting the stock exchange(s) or quotation system(s) on which any such debt instrument(s) may be traded.

#### *Risks relating to GDR/ADR Linked Securities*

Each Issuer may issue GDR/ADR Linked Securities where the Final Redemption Amount, Cash Settlement Amount or interest payable are dependent upon the value of GDRs or ADRs, or where, depending on the price of or change in the price of the GDRs or ADRs, the relevant Issuer has an obligation to deliver specified assets. Accordingly, an investment in GDR/ADR Linked Securities may bear similar market risks to a direct GDR/ADR investment and investors should take advice accordingly. An investment in GDR/ADR Linked Securities will entail significant risks not associated with a conventional debt security.

GDR/ADR Linked Redemption Notes may be redeemable by the Issuer by payment of the par value amount and/or by the physical delivery of a given number of GDRs and/or ADRs and/or by payment of an amount determined by reference to the value of the GDRs and/or ADRs. Interest payable on GDR/ADR Interest Notes may be calculated by reference to the value of the GDRs and/or ADRs.

GDR/ADR Linked W&C Securities may be settled by the physical delivery of a given number of GDRs and/or ADRs and/or by payment of an amount determined by reference to the value of the GDRs and/or ADRs.

Potential investors in GDR/ADR Linked Securities should be aware that depending on the terms of the GDR/ADR Linked Securities (i) they may receive no or a limited amount of interest, (ii) payments or delivery of any specified assets may occur at a different time than expected and (iii) except in the case of principally protected Securities, they may lose all or a substantial portion of their investment if the value of the GDRs and/or ADRs does not move in the anticipated direction.

In addition, the movements in the price of the GDRs and/or ADRs may be subject to significant fluctuations that may not correlate with changes in interest rates, currencies or other indices and the timing of changes in the relevant price of the GDRs and/or ADRs may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the price of the GDRs and/or ADRs, the greater the effect on yield.

If the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, are determined in conjunction with a multiplier greater than one or by reference to some other leverage factor, the effect of changes in the price of the GDRs and/or ADRs on the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, will be magnified.

The market price of GDR/ADR Linked Securities may be volatile and may be affected by the time remaining to the redemption date or exercise date (as applicable), the volatility of the GDRs and/or ADRs and the financial results and prospects of the issuer or issuers of the GDRs and/or ADRs as well as economic, financial and political events in one or more jurisdictions, including factors affecting the stock exchange(s) or quotation system(s) on which any such GDRs and/or ADRs may be traded.

#### *Risks relating to FX Linked Securities*

Each Issuer may issue FX Linked Securities where the Final Redemption Amount, Cash Settlement Amount or interest payable are dependent upon movements in currency exchange rates or are payable in one or more currencies which may be different from the currency in which the Securities are denominated. Accordingly, an investment in FX Linked Securities may bear similar market risks to a direct foreign exchange investment and investors should take advice accordingly. An investment in FX Linked Securities will entail significant risks not associated with a conventional debt security.

FX Linked Redemption Notes may be redeemable by the Issuer by payment of the par value amount and/or by the physical delivery of specified amount of one or more currencies and/or by payment of an amount determined by reference to the value of the currency/currencies. Interest payable on FX Linked Interest Notes may be calculated by reference to the value of one or more currencies.

FX Linked W&C Securities may be settled by the physical delivery of a specified amount of one or more currencies and/or by payment of an amount determined by reference to the value of the currency/currencies.

Potential investors in any FX Linked Securities should be aware that depending on the terms of the FX Linked Securities (i) they may receive no or a limited amount of interest, (ii) payments or delivery of any specified assets may occur at a different time than expected and (iii) except in the case of principally protected Securities, they may lose all or a substantial portion of their investment if the currency exchange rates do not move in the anticipated direction.

In addition, the movements in currency exchange rates may be subject to significant fluctuations that may not correlate with changes in interest rates or other indices and the timing of changes in the exchange rates may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the price of the currency exchange rates, the greater the effect on yield.

If the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, are determined in conjunction with a multiplier greater than one or by reference to some other leverage factor, the effect of changes in the currency exchange rates on the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, will be magnified.

Fluctuations in exchange rates of the relevant currency (or basket of currencies) will affect the value of FX Linked Securities. Furthermore, investors who intend to convert gains or losses from the exercise, redemption or sale of FX Linked Securities into their home currency may be affected by fluctuations in exchange rates between their home currency and Settled Currency (as defined below) of the Securities. Currency values may be affected by complex political and economic factors, including governmental action to fix or support the value of a currency/currencies, regardless of other market forces (see "*Exchange rate risks and exchange controls*" below).

#### *Risks relating to Commodity Linked Securities*

Each Issuer may issue Commodity Linked Securities where the Final Redemption Amount, Cash Settlement Amount or interest payable are dependent upon the price or changes in the price of commodities, basket of commodities, a commodity index or basket of commodity indices or where, depending on the price or change in the price of the commodities, basket of commodities, commodity index or basket of commodity indices, the relevant Issuer has an obligation to deliver specified assets. Accordingly, an investment in Commodity Linked Securities may bear similar market risks to a direct commodity investment and investors should take advice accordingly. An investment in Commodity Linked Securities will entail significant risks not associated with a conventional debt security.

Commodity Linked Redemption Notes may be redeemable by the Issuer by payment of the par value amount and/or by the physical delivery of specified amount of one or more commodities and/or by payment of an amount determined by reference to the value of the commodity, commodity index, commodities and/or commodity indices. Interest payable on Commodity Linked Interest Notes may be calculated by reference to the value of one or more commodity, commodity index, commodities and/or commodity indices.

Commodity Linked W&C Securities may be settled by the physical delivery of a specified amount of one or more commodities and/or by payment of an amount determined by reference to the value of the commodity, commodity index, commodities and/or commodity indices.

Potential investors in Commodity Linked Securities should be aware that depending on the terms of the Commodity Linked Securities (i) they may receive no or a limited amount of interest, (ii) payments or delivery of any specified assets may occur at a different time than expected and (iii) except in the case of principally protected Securities, they may lose all or a substantial portion of their investment if the value of the commodity(ies) or commodity index(ices) do not move in the anticipated direction.

In addition, the movements in the price of the commodity(ies) or commodity index(ices) may be subject to significant fluctuations that may not correlate with changes in interest rates, currencies or other indices and

the timing of changes in the relevant price of the commodity(ies) or commodity index(ices) may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the price or level of the commodity(ies) or commodity index(ices), the greater the effect on yield.

If the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, are determined in conjunction with a multiplier greater than one or by reference to some other leverage factor, the effect of changes in the price or level of the commodity(ies) or commodity index(ices) on the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, will be magnified.

The market price of Commodity Linked Securities may be volatile and may be affected by the time remaining to the redemption date or exercise date, as applicable, the volatility of the commodity(ies) or commodity index(ices) as well as economic, financial and political events in one or more jurisdictions, including factors affecting the stock exchange(s) or quotation system(s) on which any such commodity(ies) may be traded.

#### *Risks relating to Fund Linked Securities*

Each Issuer may issue Fund Linked Securities where the Final Redemption Amount, Cash Settlement Amount or interest payable are dependent upon the price or changes in the price of fund share(s) or unit(s) or where, depending on the price or changes in the price of fund share(s) or unit(s), the relevant Issuer has an obligation to deliver specified assets. Accordingly, an investment in Fund Linked Securities may bear similar market risks to a direct fund investment and investors should take advice accordingly. An investment in Fund Linked Securities will entail significant risks not associated with a conventional debt security.

Fund Linked Redemption Notes may be redeemable by the Issuer by payment of the par value amount and/or by the physical delivery of specified amount of one or more fund shares or units and/or by payment of an amount determined by reference to the value of the fund share(s) or unit(s). Interest payable on Fund Linked Interest Notes may be calculated by reference to the value of one or more fund shares or units.

Fund Linked W&C Securities may be settled by the physical delivery of a specified amount of one or more fund shares or units and/or by payment of an amount determined by reference to the value of the fund share(s) or unit(s).

Potential investors in Fund Linked Securities should be aware that depending on the terms of the Fund Linked Securities (i) they may receive no or a limited amount of interest (ii) payments or delivery of any specified assets may occur at a different time than expected and (iii) except in the case of principally protected Securities, they may lose all or a substantial portion of their investment if the value of the fund share(s) or unit(s) do not move in the anticipated direction.

In addition, the movements in the price of fund share(s) or unit(s) may be subject to significant fluctuations that may not correlate with changes in interest rates, currencies or other indices and the timing of changes in the relevant price of the fund share(s) or unit(s) may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the price or prices of the fund share(s) or unit(s), the greater the effect on yield.

If the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, are determined in conjunction with a multiplier greater than one or by reference to some other leverage factor, the effect of changes in the price of the fund share(s) or unit(s) on the Final Redemption Amount, Cash Settlement Amount or interest payable, or Entitlement deliverable, will be magnified.

The price of unit(s) or fund share(s) may be affected by the performance of the fund service providers, and in particular the investment adviser.

In the case of Fund Linked Securities linked to Exchange Traded Funds, if the Calculation Agent determines that an event giving rise to a Disrupted Day has occurred at any relevant time any such determination may have an effect on the timing of valuation and consequently the value of the Securities and/or may delay settlement in respect of the Securities. Prospective purchasers should review the relevant Terms and Conditions and the applicable Final Terms to ascertain whether and how such provisions apply to the Securities.

In the case of Fund Linked Securities linked to Exchange Traded Funds following the declaration by the ETF of the occurrence of any Potential Adjustment Event, the Calculation Agent will, in its sole and absolute discretion, determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical relevant Fund Shares and, if so, will (i) make the corresponding adjustment, if any, to any of the terms of the relevant Conditions and/or the applicable Final Terms as the Calculation Agent in its sole and absolute discretion determines appropriate to account for that diluting or concentrative effect and (ii) determine the effective date of that adjustment. Such adjustment may have an adverse effect on the value and liquidity of the affected Fund Linked Securities.

In addition, in the case of Fund Linked Securities linked to Exchange Traded Funds, if a Merger Event, Tender Offer, De-Listing, Material Underlying Event, Nationalisation or Insolvency occurs in relation to any Fund Share, the relevant Issuer in its sole and absolute discretion may take the action described in (i) or (ii) below:

- (i) require the Calculation Agent to determine in its sole and absolute discretion the appropriate adjustment, if any, to be made to any of the relevant Conditions and/or the applicable Final Terms to account for the Merger Event, Tender Offer, De-Listing, Material Underlying Event, Nationalisation or Insolvency and determine the effective date of that adjustment. Such adjustment may have an adverse effect on the value and liquidity of the affected Fund Linked Securities; and
- (ii) redeem or cancel, as applicable, all of the Securities. Following such redemption or cancellation an investor generally would not be able to reinvest the redemption proceeds at an effective interest rate as high as the interest rate on the relevant Securities being redeemed or cancelled and may only be able to do so at a significantly lower rate. Prospective investors should consider reinvestment risk in light of other investments available at that time.

The market price of Fund Linked Securities may be volatile and may depend on the time remaining to the redemption date or settlement date (as applicable) and the volatility of the price of fund share(s) or unit(s). The price of fund share(s) or unit(s) may be affected by the economic, financial and political events in one or more jurisdictions, including factors affecting the exchange(s) or quotation system(s) on which any units in the fund or funds may be traded.

#### *Risks relating to Inflation Linked Securities*

Each Issuer may issue Inflation Linked Securities where the Final Redemption Amount, Cash Settlement Amount or interest payable are dependent upon the level of an inflation index or indices. An investment in Inflation Linked Securities will entail significant risks not associated with a conventional debt security.

Inflation Linked Redemption Notes may be redeemable by the Issuer by payment of the par value amount and/or by payment of an amount determined by reference to the value of the inflation index/indices. Interest payable on Inflation Linked Interest Notes may be calculated by reference to the value of one or more inflation index/indices.

Inflation Linked W&C Securities will be settled by payment of an amount determined by reference to the value of the inflation index/indices.

Potential investors in Inflation Linked Securities should be aware that depending on the terms of the Inflation Linked Securities (i) they may receive no or a limited amount of interest, (ii) payments may occur at a different time than expected and (iii) except in the case of principally protected Securities, they may lose all or a substantial portion of their principal investment if the value of the inflation index does not move in the anticipated direction.

In addition, the movements in the level of the inflation index may be subject to significant fluctuations that may not correlate with changes in interest rates, currencies or other indices and the timing of changes in the relevant level of the inflation index may affect the actual yield to investors, even if the average level is consistent with their expectations. In general, the earlier the change in the level of an inflation index or result of a formula, the greater the effect on yield.

If the Final Redemption Amount, Cash Settlement Amount or interest payable are determined in conjunction with a multiplier greater than one or by reference to some other leverage factor, the effect of changes in the

level of an inflation index on the Final Redemption Amount, Cash Settlement Amount or interest payable will be magnified.

Pursuant to the relevant Terms and Conditions, the Calculation Agent may make determinations in relation to the inflation index or indices, and in certain circumstances, following cessation of publication of the inflation index, the Calculation Agent may determine that there is no appropriate alternative inflation index, in which case the relevant Issuer may redeem or cancel the Securities, as applicable. Such determinations may have an effect on the timing of valuation and consequently the value of the Securities and/or may delay settlement in respect of the Securities. Prospective purchasers should review the relevant Terms and Conditions of the Securities and the applicable Final Terms to ascertain whether and how such provisions apply to the Securities.

The market price of Inflation Linked Securities may be volatile and may depend on the time remaining to the redemption date or exercise date (as applicable) and the volatility of the level of the inflation index. The level of the inflation index may be affected by the economic, financial and political events in one or more jurisdictions.

#### *Risks relating to Credit Linked Notes and Certificates*

The Issuers may issue Credit Linked Notes or Credit Linked Certificates where the amount payable is dependent upon whether certain events ("Credit Events") have occurred in respect of one or more Reference Entity/Entities and, if so, on the value of certain specified assets of such Reference Entity/Entities or where, if such events have occurred, on redemption the relevant Issuer's obligation is to deliver certain specified assets.

Prospective investors in any such Credit Linked Notes or Credit Linked Certificates should be aware that depending on the terms of the Credit Linked Notes or Credit Linked Certificates (i) they may receive no or a limited amount of interest, (ii) the payment of the redemption amount or interest or delivery of any specified assets may occur at a different time than expected and (iii) they may lose all or a substantial portion of their investment.

The market price of Credit Linked Notes or Credit Linked Certificates may be volatile and will be affected by, amongst other things, the time remaining to the redemption date or settlement date, as applicable, prevailing credit spreads and the creditworthiness of the reference entity which in turn may be affected by the economic, financial and political events in one or more jurisdictions.

Where the Credit Linked Notes or Credit Linked Certificates provide for physical delivery, the relevant Issuer may determine that the specified assets to be delivered are either (a) assets which for any reason (including, without limitation, failure of the relevant clearance system or due to any law, regulation, court order or market conditions or the non-receipt of any requisite consents with respect to the delivery of assets which are loans) it is impossible or illegal to deliver on the specified settlement date or (b) assets which the relevant Issuer and/or any Affiliate and/or agent has not received under the terms of any transaction and/or trading position entered into by the relevant Issuer and/or such Affiliate and/or agent to hedge the relevant Issuer's obligations in respect of the Credit Linked Notes or Credit Linked Certificates. Any such determination may delay settlement in respect of the Credit Linked Notes or Credit Linked Certificates and/or cause the obligation to deliver such specified assets to be replaced by an obligation to pay a cash amount which, in either case, may affect the value of the Credit Linked Notes or Credit Linked Certificates and, in the case of payment of a cash amount, will affect the timing of the valuation of such Credit Linked Notes or Credit Linked Certificates and as a result, the amount payable on redemption. Prospective investors should review the relevant Terms and Conditions and the applicable Final Terms to ascertain whether and how such provisions should apply to the Credit Linked Notes or Credit Linked Certificates.

The relevant Issuer, the Dealer(s) or any of their respective Affiliates may have acquired, or during the term of the Securities may acquire, non-public information with respect to the Reference Entity/Entities that they may not disclose. Prospective investors must therefore make an investment decision based upon their own due diligence and purchase the Credit Linked Notes or Certificates in the knowledge that non-public information which the relevant Issuer, the Dealer(s) or any of their respective Affiliates may have will not be disclosed to investors. None of the relevant Issuer, the Dealer(s) or any of their respective Affiliates is under any obligation (i) to review on the Holders' behalf, the business, financial conditions, prospects,

creditworthiness, status or affairs of the Reference Entity/Entities or conduct any investigation or due diligence into the Reference Entity/Entities or (ii) other than as may be required by applicable rules and regulations relating to the Securities, to make available (a) any information relating to the Securities or (b) any non-public information they may possess in respect of the Reference Entity/Entities.

In the case of Physical Delivery, where the Reference Obligation is a loan, in order for the Delivery of the loan (or an interest in the loan) to be effected, the Reference Obligation must be capable of being transferred to the Holder in accordance with its terms and the Holders must have the capacity to hold such loan (or loan interest).

The relevant Issuer's obligations in respect of Credit Linked Notes or Credit Linked Certificates are irrespective of the existence or amount of the relevant Issuer's and/or any Affiliates' credit exposure to a Reference Entity and the Issuer and/or any Affiliate need not suffer any loss nor provide evidence of any loss as a result of the occurrence of a Credit Event.

### ***Risks relating to Securities generally***

#### ***Securities are Unsecured Obligations***

The Securities constitute direct, unsubordinated, unconditional and unsecured obligations of the relevant Issuer and rank equally among themselves and rank equally (subject to exceptions as are from time to time provided by applicable laws) with all other present and future direct, unsubordinated, unconditional and unsecured indebtedness or obligations, as applicable, of the relevant Issuer.

The obligations of ML&Co. under the Guarantee, save for such exceptions as may be provided by applicable legislation or judicial order, rank *pari passu* with its other present and future unsecured and unsubordinated indebtedness.

Since ML&Co. is a holding company, the right of ML&Co., and hence the right of creditors of ML&Co. (including the Holders), to participate in any distribution of the assets of any subsidiary (including the relevant Issuer) upon its liquidation or reorganization or otherwise is necessarily subject to the prior claims of creditors of the subsidiary, except to the extent that claims of ML&Co. itself as a creditor of the subsidiary may be recognized. In addition, dividends, loans and advances from certain subsidiaries to ML&Co. are restricted by net capital requirements under the Exchange Act and under the rules of certain exchanges and other regulatory bodies.

#### ***Market Disruption Event and Disrupted Day***

If an issue of Securities includes provisions dealing with the occurrence of a market disruption event or a failure to open of an exchange or related exchange on a Valuation Date, an Averaging Date or a Pricing Date and the Calculation Agent determines that a market disruption event or such failure has occurred or exists on a Valuation Date, an Averaging Date or a Pricing Date, any consequential postponement of the Valuation Date, Averaging Date or a Pricing Date or any alternative provisions for valuation provided in any Securities may have an adverse effect on the value of such Securities.

#### ***Settlement Disruption Event and Failure to Deliver due to Illiquidity***

In the case of Physical Delivery Securities (other than Credit Linked Notes or Credit Linked Certificates), if a Settlement Disruption Event occurs or exists on the Maturity Delivery Date (in the case of Notes) or Settlement Date (in the case of W&C Securities), settlement will be postponed until the next date on which no Settlement Disruption Event occurs. The relevant Issuer in these circumstances also has the right to pay the Disruption Cash Redemption Price in lieu of delivering the Entitlement. Such a determination may have an adverse effect on the value of the relevant Securities. In addition if "Failure to Deliver due to Illiquidity" is specified as applying in the applicable Final Terms, and in the opinion of the Calculation Agent it is impossible or impracticable to deliver some or all of the Relevant Assets comprising the Entitlement when due as a result of illiquidity in the market for the Relevant Assets, the relevant Issuer has the right to pay the Failure to Deliver Settlement Price in lieu of delivering those Relevant Assets.

#### ***Expenses***

Holders of Physical Delivery Securities must pay all Expenses relating to such Physical Delivery Securities. As used in the Terms and Conditions, "Expenses" includes any applicable depositary charges, transaction or

exercise charges, stamp duty, stamp duty reserve tax, issue, registration, securities transfer and/or other taxes or duties arising from the redemption, exercise and settlement (as applicable) of such Securities and/or the delivery of the Entitlement.

*No claim against any Reference Item*

A Security will not represent a claim against any Reference Item and, in the event of any loss, a Holder will not have recourse under a Security to any Reference Item.

*Option to vary settlement under the Guarantee*

In relation to Physical Delivery Securities, under the Guarantee the Guarantor has the right at all times to elect not to deliver or procure delivery of the Entitlement to the holders of Physical Delivery Securities, but in lieu thereof to pay an amount in cash equal to the Guaranteed Cash Settlement Amount specified in the applicable Final Terms or Securities Note. Such cash payment will constitute a complete discharge of the Guarantor's obligations in relation to such Physical Delivery Securities.

*Modification and Waivers*

The relevant Conditions provide that the relevant Agent and the relevant Issuer may, without the consent of Holders, agree to (i) any modification (subject to certain specific exceptions) of the Securities or the Agency Agreement which is not prejudicial to the interests of the Holders or (ii) any modification of the Securities or the Agency Agreement which is of a formal, minor or technical nature or is made to correct a manifest error or proven error or to comply with mandatory provisions of law.

*Meetings of Holders*

The Terms and Conditions contain provisions for calling meetings of Holders to consider matters affecting their interests generally. These provisions permit defined majorities to bind all Holders including Holders who did not attend and vote at the relevant meeting and Holders who voted in a manner contrary to the majority.

*Hedging and other Potential Conflicts of Interest*

The relevant Issuer, ML&Co. and/or any of their respective Affiliates or agents may engage in activities that may result in conflicts of interests between their and their respective Affiliates' or agents' financial interests on the one hand and the interests of the Holders on the other hand. The relevant Issuer, ML&Co. and/or any of their respective Affiliates or agents may also engage in trading activities (including hedging activities) related to the Reference Item(s) underlying any Securities and other instruments or derivative products based on or related to the Reference Item(s) underlying any Security for their proprietary accounts or for other accounts under their management. The relevant Issuer, ML&Co. and/or any of ML&Co.'s Affiliates or agents may also issue other derivative instruments in respect of the Reference Item(s) underlying Securities. The relevant Issuer, ML&Co. and/or any of ML&Co.'s Affiliates or agents may also act as underwriter in connection with future offerings of shares or other securities related to an issue of Securities or may act as financial adviser to certain companies, companies whose shares are included in a basket of shares, a company which is a reference entity, or in a commercial banking capacity for any such companies. Such activities could present certain conflicts of interest, could influence the prices of such shares or other securities and could adversely affect the value of such Securities. The relevant Issuer also may enter into arrangements with Affiliates or agents to hedge market risks associated with its obligations under the Securities. Any such Affiliate or agent would expect to make a profit in connection with such arrangements. The relevant Issuer would not seek competitive bids for such arrangements from unaffiliated parties.

Where the Securities are offered to the public, as the Dealer(s) and any distributors act pursuant to a mandate granted by the relevant Issuer and they receive fees on the basis of the services performed and the outcome of the placement of the Securities, potential conflicts of interest could arise.

Any additional risk factors relating to additional conflicts of interest with respect to such Securities will be specified in the applicable Final Terms.

In addition, unless otherwise specified in the applicable Final Terms, the Calculation Agent is an Affiliate of the relevant Issuer and ML&Co. and in such capacity may make certain determinations and calculate amounts payable or deliverable to Holders. Under certain circumstances, the Calculation Agent as an

Affiliate of the relevant Issuer or ML&Co. and its responsibilities as Calculation Agent for the Securities could give rise to potential conflicts of interest between the Calculation Agent and the Holders. As ML&Co. controls the Affiliate, potential conflicts of interest could arise.

#### *Distributor(s) Fees*

Investors should note that, in certain circumstances immediately following the issue of the Securities, the secondary market price of the Securities may be less than the Issue Price and/or the Offer Price in the event that the Issue Price and/or the Offer Price included the fees to be paid to distributor(s).

#### *Physical Delivery Requirements and Settlement Risk*

In order to receive the Entitlement in respect of a Physical Delivery Note, the holder of such Note must (1) duly deliver a duly completed Asset Transfer Notice on or prior to the relevant time on the Cut-Off Date and (2) pay the relevant Expenses.

In order to receive the Entitlement in respect of a Physical Delivery W&C Security, the holder of such W&C Security must (1) deliver or send to the relevant Agent (a) a duly completed Exercise Notice on or prior to the relevant time on the Expiration Date (in the case of a Warrant) or (b) a duly completed Collection Notice on or prior to the relevant time on the Cut-off Date (in the case of a Certificate) and (2) pay the relevant Expenses.

If so indicated in the applicable Final Terms, the relevant Issuer has an option to vary settlement in respect of the Securities. If exercised by the Issuer, this option will lead to Physical Delivery Securities being cash settled or Cash Settled Securities being physically settled. Exercise of such option may affect the value of the Securities.

#### *Illegality of Securities*

If the relevant Issuer determines that the performance of either its obligations under the Securities or the obligations of the Guarantor under the Guarantee has or will become illegal in whole or in part for any reason, the relevant Issuer may redeem or cancel the Securities, as applicable.

If, in the case of illegality and to the extent permitted by applicable law, the relevant Issuer redeems or cancels the Securities, then the relevant Issuer will, in the case of Notes, redeem each Note at the Early Redemption Amount together (if appropriate) with interest accrued to (but excluding) the date of redemption, or in the case of W&C Securities, pay an amount to each Holder determined by reference to the fair market value of each Security less hedge costs, which may be less than the purchase price of the Securities and may in certain circumstances be zero.

#### *Additional Risk Factors*

Additional risk factors in relation to specific issues of Securities may be included in the applicable Final Terms.

#### **Notes**

##### *Partly-paid Notes*

The Issuer may issue Notes where the issue price is payable in more than one instalment. Failure to pay any subsequent instalment could result in an investor losing all of his investment.

##### *Notes subject to optional redemption by the Issuer*

An optional redemption feature of Notes is likely to limit their market value. During any period when the Issuer may elect to redeem Notes, the market value of those Notes generally will not rise substantially above the price at which they can be redeemed. This also may be true prior to any redemption period.

The Issuer may be expected to redeem Notes when its cost of borrowing is lower than the interest rate on the Notes. At those times, an investor generally would not be able to reinvest the redemption proceeds at an effective interest rate as high as the interest rate on the Notes being redeemed and may only be able to do so at a significantly lower rate. Potential investors should consider reinvestment risk in light of other investments available at that time.



## ***Risks relating to W&C Securities***

### ***Certain Factors Affecting the Value and Trading Price of W&C Securities***

Either (1) the Cash Settlement Amount (in the case of Cash Settled W&C Securities) or (2) the value of the Entitlement less (in the case of Warrants) the Exercise Price (the "**Physical Settlement Value**") (in the case of Physical Delivery W&C Securities) at any time prior to expiration (in the case of a Warrant) or exercise (in the case of a Certificate) is typically expected to be less than the trading price of such W&C Securities at that time. The difference between the trading price and the Cash Settlement Amount or the Physical Settlement Value, as the case may be, will reflect, among other things, the "time value" of the W&C Securities. The "time value" of the W&C Securities will depend partly upon the length of the period remaining to expiration (in the case of a Warrant) or exercise (in the case of a Certificate) and expectations concerning the price or level of the Reference Item(s). W&C Securities offer hedging and investment diversification opportunities but also pose some additional risks with regard to interim value. The interim value of the W&C Securities varies with the price or level of the Reference Item(s), as well as by a number of other interrelated factors, including those specified herein.

Before exercising W&C Securities, Holders should carefully consider, among other things, (i) the trading price of the W&C Securities, (ii) the price or level and volatility of the Reference Item(s), (iii) the time remaining to expiration (in the case of a Warrant) or exercise (in the case of a Certificate), (iv) in the case of Cash Settled W&C Securities, the probable range of Cash Settlement Amounts, (v) any change(s) in interim interest rates and dividend yields if applicable, (vi) any change(s) in currency exchange rates and (vii) any related transaction costs.

An optional exercise or mandatory early exercise feature in W&C Securities is likely to limit their market value. In the case of an optional exercise feature, during any period when the relevant Issuer may elect to exercise W&C Securities, the market value of those W&C Securities generally will not rise substantially above the price at which they can be exercised. This also may be true prior to any exercise period. In the case of a mandatory exercise feature, if the relevant Mandatory Early Exercise Event occurs the W&C Securities will be exercised prior to their originally designated exercise or expiry date. Potential investors should be aware that in certain circumstances, an optional exercise or mandatory early exercise of the W&C Securities by the relevant Issuer may result in a loss of all or a substantial portion of their investment.

### ***Risks related to Warrants only***

#### ***Time Lag after Exercise***

In the case of any exercise of Warrants, there will be a time lag between the time a Holder gives instructions to exercise and the time the applicable Cash Settlement Amount (in the case of Cash Settled Warrants) relating to such exercise is determined. Any such delay between the time of exercise and the determination of the Cash Settlement Amount will be specified in the Terms and Conditions of the W&C Securities. However, such delay could be significantly longer, particularly in the case of a delay in exercise of Warrants arising from any daily maximum exercise limitation (in the case of American Style Warrants), the occurrence of a market disruption event or failure to open of an exchange or related exchange (if applicable) or following the imposition of any exchange controls or other similar regulations affecting the ability to obtain or exchange any relevant currency (or basket of currencies) in the case of FX Linked Warrants. The applicable Cash Settlement Amount may change significantly during any such period, and such movement or movements could decrease the Cash Settlement Amount of the Warrants being exercised and may result in such Cash Settlement Amount being zero.

#### ***Minimum Exercise Amount***

If so indicated in the applicable Final Terms, a Holder must tender or hold a specified number of Warrants at any one time in order to exercise. Thus, Holders with fewer than the specified minimum number of Warrants will either have to sell their Warrants or purchase additional Warrants, incurring transaction costs in each case, in order to realise their investment. Furthermore, holders of such Warrants incur the risk that there may be differences between the trading price of such Warrants and the Cash Settlement Amount (in the case of Cash Settled Warrants) or the Physical Settlement Value (in the case of Physical Delivery Warrants) of such Warrants.

### *Limitations on Exercise*

In the case of American Style Warrants, if so indicated in the applicable Final Terms, the Issuer will have the option to limit the number of American Style Warrants exercisable on any date (other than the Expiration Date) to the maximum number specified in the applicable Final Terms and, in conjunction with such limitation, to limit the number of American Style Warrants exercisable by any person or group of persons (whether or not acting in concert) on such date. In the event that the total number of American Style Warrants being exercised on any date (other than the Expiration Date) exceeds such maximum number and the Issuer elects to limit the number of American Style Warrants exercisable on such date, a Holder may not be able to exercise on such date all American Style Warrants that such holder desires to exercise. In any such case, the number of American Style Warrants to be exercised on such date will be reduced until the total number of American Style Warrants exercised on such date no longer exceeds such maximum, such American Style Warrants being selected at the discretion of the Issuer or in any other manner specified in the applicable Final Terms. Unless otherwise specified in the applicable Final Terms, the American Style Warrants tendered for exercise but not exercised on such date will be automatically exercised on the next date on which American Style Warrants may be exercised, subject to the same daily maximum limitation and delayed exercise provisions.

### *Rule 144A Warrant Transfer Restrictions*

Issue and transfers of Warrants to purchasers that intend to hold their Warrants through a Rule 144A Global Warrant may be made only to or through MLICo. to purchasers (i) that have executed and delivered to the Issuer an Investor Representation Letter pursuant to which such purchaser must certify, among other things, that such purchaser is a QIB who is also a QP and (ii) that will hold their Warrants through DTC direct participants that have executed and delivered to the Issuer a Custodian Letter and that have thereby become "Authorised Custodians" with respect to the Warrants. A transfer or attempted transfer of any Rule 144A Warrant which does not comply with the applicable transfer restrictions shall be absolutely null and void *ab initio* and shall vest no rights in the purported transferee.

### *Risks related to Certificates*

#### *Swedish Dematerialised Certificates - U.S. Certifications*

The initial beneficial owner of a Swedish Dematerialised Certificate is required on the Issue Date to provide certification to the relevant Issuer that such owner is not a U.S. person or persons who have purchased for resale to any U.S. person. Before buying any Swedish Dematerialised Certificates on the secondary market, investors should duly investigate as to whether such U.S. certification was properly provided in respect of the issue of such Swedish Dematerialised Certificates. Investors will not receive any payments in respect of any Swedish Dematerialised Certificates in respect of which such U.S. certification was not duly provided.

### *Risks related to the market generally*

Set out below is a brief description of the principal market risks, including liquidity risk, exchange rate risk, interest rate risk and credit risk.

#### *Possible Illiquidity of the Securities in the Secondary Market*

It is not possible to predict the price at which Securities will trade in the secondary market or whether such market will be liquid or illiquid. Each Issuer may, but is not obliged to, list or admit to trading Securities on a stock exchange or market. If the Securities are not listed or admitted to trading on any stock exchange or market, pricing information for the Securities may be more difficult to obtain and the liquidity of the Securities may be adversely affected. If the relevant Issuer does list or admit to trading an issue of Securities, there can be no assurance that at a later date, the Securities will not be delisted or that trading on such stock exchange or market will not be suspended. In the event of a delisting or suspension of listing or trading on a stock exchange or market, the relevant Issuer will use its reasonable efforts to list or admit to trading the Securities on another stock exchange or market. Also, (in the case of American Style Warrants) to the extent Warrants of a particular issue are exercised, the number of Warrants of such issue outstanding will decrease, resulting in a diminished liquidity for the remaining Warrants of such issue. A decrease in the

liquidity of an issue of Warrants may cause, in turn, an increase in the volatility associated with the price of such issue of Warrants.

The relevant Issuer cannot assure holders of the Securities that a trading market for their Securities will ever develop or be maintained. Many factors independent of the creditworthiness of the relevant Issuer or ML&Co. affect the trading market of the Securities. These factors include:

- (a) the complexity and volatility of the Reference Item or formula or other basis of reference applicable to the Securities,
- (b) the method of calculating amounts payable and/or deliverable, or other consideration, if any, in respect of the Securities,
- (c) the time remaining to the expiration (in the case of Warrants), exercise (in the case of Certificates) or redemption (in the case of Notes) of the Securities,
- (d) the number of Securities outstanding,
- (e) the settlement features of the Securities,
- (f) the amount of other securities linked to the Reference Item or formula or other basis of reference applicable to the Securities, and
- (g) the level, direction and volatility of market interest rate generally.

In addition, certain Securities may be designed for specific investment objectives or strategies and, therefore, may have a more limited secondary market and experience more price volatility. Holders may not be able to sell such Securities readily or at prices that will enable them to realise their anticipated yield. No investor should purchase Securities unless such investor understands and is able to bear the risk that such Securities may not be readily saleable, that the value of such Securities will fluctuate over time, that such fluctuations may be significant and that such investor may lose all or a substantial portion of the purchase price of the Securities.

The relevant Issuer, ML&Co., or any of ML&Co.'s Affiliates may, but is not obliged to, at any time purchase Securities at any price in the open market or by tender or private treaty for their own account for business reasons or in connection with their hedging arrangements. Any Securities so purchased may be held or resold or surrendered for cancellation. The relevant Issuer, ML&Co., or any of ML&Co.'s Affiliates may, but is not obliged to, be a market-maker for an issue of Securities. Even if the relevant Issuer or such other entity is a market-maker for an issue of Securities, the secondary market for such Securities may be limited. To the extent that an issue of Securities becomes illiquid, an investor may have to exercise such Securities (in the case of American Style Warrants) or wait until the Exercise Date (in the case of European Style Warrants or Certificates) or the Maturity Date (in the case of Notes) of such Securities to realise value. These activities may affect the price of such obligations or securities in a manner that would be adverse to a Holder's investment in the Securities. The relevant Issuer and ML&Co. and its Affiliates have not considered, and are not required to consider, the interest of investors as Holders in connection with entering into any of the above mentioned transactions.

There may be less liquidity in the market for Securities if the Securities are exclusively offered to retail investors without any offer to institutional investors.

If the Certificates are Italian Listed Certificates, the relevant Issuer (or an entity on behalf of the relevant Issuer) will display continuous "bid" and "offer" prices for the Certificates, in accordance with the rules of the SeDex.

#### *Exchange rate risks and exchange controls*

In the case of Cash Settled Securities the relevant Issuer will pay the Cash Settlement Amount (in the case of W&C Securities) or Final Redemption Amount (in the case of the Notes) in respect of the Securities in the Settlement Currency specified in the applicable Final Terms. This presents certain risks relating to currency conversions if an investor's financial activities are denominated principally in a currency or currency unit (the "Investor's Currency") other than the Settlement Currency or Specified Currency, as applicable (the "Settled Currency"). These include the risk that exchange rates may significantly change (including

changes due to devaluation of the Settled Currency or revaluation of the Investor's Currency) and the risk that authorities with jurisdiction over the Investor's Currency may impose or modify exchange controls. An appreciation in the value of the Investor's Currency relative to the Settled Currency would decrease (i) the Investor's Currency-equivalent yield on the Securities, (ii) the Investor's Currency equivalent value of the Cash Settlement Amount or Final Redemption Amount (as applicable) in respect of the Securities and (iii) the Investor's Currency equivalent market value of the Securities.

Government and monetary authorities may impose (as some have done in the past) exchange controls that could adversely affect an applicable exchange rate. As a result, the Cash Settlement Amount (in the case of Cash Settled Securities) or the Final Redemption Amount (in the case of Notes) that investors may receive may be less than expected or zero.

### *Exchange Listing*

When the relevant Issuer specifies in the applicable Final Terms that a Series of Securities is to be admitted to trading on the Luxembourg Stock Exchange's regulated market and admitted to listing on the Official List of the Luxembourg Stock Exchange and/or listed on or admitted to trading by any other relevant stock exchange or market within the European Union ("EU"), which qualifies as a regulated market within the meaning of Article 4(14) of the Markets in Financial Instruments Directive (Directive 2004/39/EC) (each an "EU Exchange"), the relevant Issuer expects, but is not obligated to Holders, to maintain such listing of the Securities on such EU Exchange(s). Changed circumstances, including changes in listing requirements, could result in a suspension or removal of any such listing, or cause the relevant Issuer to conclude that continued listing of the Securities on such EU Exchange(s) is unduly burdensome.

For example, Directive 2004/109/EC (the "Transparency Directive") was adopted in December 2004 and relates to information about issuers and guarantors of such issuers whose securities are admitted to trading on a regulated market in the EU. The Transparency Directive was required to be implemented in EU Member States by 20th January, 2007. It will have the effect of requiring U.S. companies (such as ML&Co.) preparing their financial statements in accordance with United States Generally Accepted Accounting Principles ("U.S. GAAP") to prepare financial statements in respect of any financial year starting on or after 1st January, 2009 in accordance with International Financial Reporting Standards as adopted by the EU ("IFRS"), in order for Securities issued or guaranteed by such entities to remain listed on such EU Exchange(s), unless it is determined that U.S. law imposes "equivalent" requirements. The European Commission is required to determine equivalence of GAAP of third countries, including the United States, by six months before 1st January, 2009. It is unknown as of the date of this Base Prospectus whether the requirement to prepare financial statements in accordance with U.S. GAAP will be determined to be "equivalent" in all respects to the requirements of the Transparency Directive.

Because the proposed Transparency Directive may be implemented in a manner which could be unduly burdensome for ML&Co., the relevant Issuer is under no obligation to maintain any listing or admission to trading of the Securities. Accordingly, Holders should be aware that, in circumstances where a listing or admission to trading on any EU Exchange(s) would require preparation of financial statements in accordance with standards other than U.S. GAAP or require ML&Co. to provide additional information and/or a report from its auditors as a result of differences between U.S. GAAP and IFRS, or in any other circumstances where the EU Financial Services Action Plan is implemented in a manner that, in the opinion of ML&Co., is unduly burdensome, Securities issued under the Programme may be de-listed. The relevant Issuer may, but is not obliged to, seek an alternative listing for such Securities. However, if such an alternative listing is not available to the relevant Issuer or is, in the opinion of the relevant Issuer, unduly burdensome, an alternative listing for such Securities may not be obtained. Although no assurance is made as to the liquidity of such Securities as a result of a listing on any EU Exchange(s), de-listing of Securities from any EU Exchange(s) may have a material effect on the ability of Holders to resell such Securities in the secondary market.

### *Legal investment considerations may restrict certain investments*

The investment activities of certain investors are subject to legal investment laws and regulations, or review or regulation by certain authorities. Each potential investor should consult its legal advisers to determine whether and to what extent (1) Securities are legal investments for it, (2) Securities can be used as collateral for various types of borrowing and (3) other restrictions apply to its purchase or pledge of any Securities.

**Financial institutions should consult their legal advisors or the appropriate regulators to determine the appropriate treatment of Securities under any applicable risk-based capital or similar rules.**

## COMMONLY ASKED QUESTIONS ABOUT THE PROGRAMME

*This description is intended to give you an overview of the Issuers and the types of Securities that may be issued under the programme. Any decision to invest in any Securities should only be made after you have carefully read and understood all of the information set out or incorporated by reference in this document and the applicable Final Terms or the Registration Document and applicable Securities Note and Summary (if any).*

### ***What is Merrill Lynch S.A. and Merrill Lynch International & Co. C.V.?***

MLSA is a Luxembourg public limited liability company. MLSA was incorporated on 18th December, 1991 as a *société anonyme* for an unlimited period.

MLICo. is a Netherlands Antilles limited partnership of unlimited duration which commenced operation on 1st August, 1975 under registered number 11705 in the Commercial Registry of the Chamber of Commerce in Curaçao

### ***What do the Issuers do?***

The Issuers are finance vehicles whose principal purposes are to raise debt or enter into financial contracts to assist the financing activities of the relevant Issuer's affiliates.

### ***What types of product will be issued under the Programme?***

MLSA may issue Notes and Certificates and MLICo. may issue Certificates and Warrants (together with the Notes, the "Securities"). The Securities are unconditionally and irrevocably guaranteed by ML&Co. The Issuers may issue conventional debt securities including fixed or floating rate notes as well as Securities with returns linked to one or more underlying asset or basis of reference ("**Linked Securities**"). The returns on Securities may be received by investors in interest (in the case of Notes) or additional amounts (in the case of W&C Securities) and/or on redemption (in the case of Notes) or exercise (in the case of Warrants or Certificates).

The return on Linked Securities may be linked to the performance of one or a combination of a wide range of reference bases which may include, but will not be limited to, indices (including equity, bond or commodity indices), currency exchange rates, shares (including GDRs and/or ADRs), fund shares or units, commodities, inflation indices or the credit of one or more underlying entities. The composition of the relevant reference basis or bases may be designed to change over time in accordance with the relevant terms and conditions.

The relevant terms and conditions of a particular issue of Securities will specify the applicable returns, when such returns are payable or deliverable (see below) and the terms on which they are payable (including whether capital is at risk) or deliverable (see below). Any return will normally be paid by the relevant Issuer at maturity (in the case of Notes) or settlement (in the case of Warrants and Certificates) as part of the applicable Final Redemption Amount (in the case of Notes) or the Cash Settlement Amount (in the case of Warrants and Certificates). Any interest or additional amounts, as the case may be, will normally be paid by the relevant Issuer on specified dates. In certain circumstances the return on redemption or settlement of Securities may be the physical delivery of certain specified assets (the Entitlement) after payment by the investor of certain cash sums to the Issuer such as Expenses or, in the case of Warrants, the relevant Exercise Price.

The relevant terms and conditions of a particular issue of Securities will be the terms and conditions for the Securities set out in this Base Prospectus as completed, amended and supplemented in the applicable Final Terms or applicable Securities Note.

### ***How much of my investment is at risk?***

Some of the Notes will guarantee a minimum Final Redemption Amount on the Maturity Date for such Notes. Other Securities will put the investor's investment at risk in whole or in part so that they may receive an amount or assets with a value less than their original investment or lose their entire investment. The product terms and conditions will make it clear whether, and in what circumstances, an investor's investment is at risk. If the terms and conditions of a particular product provide that an investor's entire investment could be lost, an investor should only invest in the Securities if they are willing to accept that risk.

Each potential investor should also note that any return received on the Securities could be lower than the interest that the investor could have earned by investing in a simple fixed rate product (like a bank or building society account) paying the prevailing market rate.

Therefore some Securities may not be suitable for a potential investor who would prefer a lower risk investment.

***What should I read before investing?***

You should carefully read and understand this Base Prospectus and the applicable Final Terms or applicable Securities Note and Summary (if any) prior to investing in any Securities.

This Base Prospectus contains information about the Issuers and Guarantor, the general terms and conditions of Securities and general information about the offer and issue of Securities. The applicable Final Terms or applicable Securities Note will contain the specific terms and conditions of such Securities together with information about how investors can purchase them (if applicable), product specific risk factors and other product specific information.

It is important that you obtain, carefully read and understand the applicable Final Terms or applicable Securities Note and Summary (if any) for Securities in which you are considering to invest.

***Who is Merrill Lynch & Co., Inc?***

Merrill Lynch & Co., Inc. is a holding company and together with its subsidiaries, provides investment, financing, insurance and related services to individuals and institutions on a global basis through its broker, dealer, banking and other financial services subsidiaries. A description of Merrill Lynch & Co., Inc. is set out on pages 324 to 330 of this Base Prospectus.

***What will the Issuer do with my money?***

MLSA intends to use the net proceeds from the sale of the Notes for general corporate purposes, including making loans to ML&Co. and its subsidiaries. ML&Co. intends to use the proceeds of such loans for general corporate purposes. Such general corporate purposes may include the funding of investments in, or extensions of credit to, its subsidiaries, the funding of assets of ML&Co. and its subsidiaries, the lengthening of the average maturity of ML&Co.'s borrowings, and the financing of acquisitions. Pending such application, the net proceeds will be applied to the reduction of short term indebtedness or temporarily invested. Management of ML&Co. expects that it will, on a recurrent basis, engage in additional financings as the need arises to finance the growth of ML&Co., through acquisitions or otherwise, or to lengthen the average maturity of its borrowings. To the extent that Notes being purchased for resale by Merrill Lynch International, Merrill Lynch Capital Markets AG or Merrill Lynch (Singapore) Pte. Ltd. are not resold, the aggregate proceeds available to ML&Co. and its subsidiaries on a consolidated basis would be reduced.

Each Issuer intends to use the net proceeds from each issue of W&C Securities issued by it for its general corporate purposes. A substantial portion of the proceeds from the issue of W&C Securities may be used to hedge market risk with respect to such W&C Securities. If in respect of any particular issue of W&C Securities, there is a particular identified use of proceeds, this will be stated in the applicable Final Terms.

***What are the risks of investing in any Securities?***

Before making an investment in any Securities, you should carefully consider all of the information set out in the Base Prospectus relating to the relevant Securities as well as your own personal circumstances. You should have particular regard to, among other matters, the considerations described under the heading "Risk Factors" on pages 28 to 49 of this document and in the applicable Final Terms or applicable Securities Note.

In order to offer the possibility of higher returns, some Securities will carry higher risks. The applicable Final Terms or applicable Securities Note for a series of Securities will state whether your investment is designed to be at risk and set out the terms on which your investment will be repaid.

***What fees and expenses are payable in connection with my Securities?***

The Issuers have incurred and will continue to incur fees and expenses which do not directly relate to one or more specific series of Securities. These expenses include (without limitation) fees and expenses incurred or

to be incurred by or on behalf of the Issuers in connection with the preparation of this document, the preparation and publication of financial statements and reports, and the general administration of the Issuers. Certain of these expenses will be reimbursed or paid on behalf of the Issuers by Merrill Lynch International.

The fees and expenses which relate to a particular series of Securities will be described and funded as set out in the applicable Final Terms or applicable Securities Note.

***What tax will I have to pay?***

General information relating to United States, Luxembourg, Netherlands Antilles and France taxation, is set out under the heading "Taxation" on pages 332 to 348 of this Base Prospectus. If you are unsure of the tax implications of making an investment in any Securities you should obtain professional tax advice.

***Will my Securities be listed on a Stock Exchange?***

Application has been made to the Luxembourg Stock Exchange for Securities issued under the Programme to be admitted to trading on the Luxembourg Stock Exchange's regulated market and to be listed on the Official List of the Luxembourg Stock Exchange. Application has also been made to the Luxembourg Stock Exchange for Securities issued under the Programme to be admitted to trading on the Luxembourg Stock Exchange's alternative market – Euro MTF – and to be listed on the Official List of the Luxembourg Stock Exchange. The relevant Issuer may seek a listing for such Securities on the regulated market of the Luxembourg Stock Exchange, the Euro MTF or other stock exchanges, as applicable. The Issuers may also issue Securities which are not listed. It will be disclosed in the applicable Final Terms or applicable Securities Note whether the relevant Securities are intended to be listed and, if so, on which stock exchange.

***What are the terms on which Securities will be offered?***

If applicable, details of the offer, including details of the Offer Period, Issue Price, minimum or maximum subscription amounts, settlement arrangements and any other conditions applicable in relation to an offer of a particular series of Securities and the relevant Issuer will be set out in the applicable Final Terms or applicable Securities Note.

***How can I hold my Securities?***

The Issuers intend that the Securities will at all times be represented by a Global Note or a Global W&C Security (a "Global Security"), except in the case of Swedish Securities, which will be in dematerialised form. In relation to Securities represented by a Global Security or dematerialised securities, Securities will normally be held by investors through custodial arrangements with their bank or broker. Banks and brokers will themselves hold such Securities through a Clearing System such as Euroclear, Clearstream Luxembourg, Clearstream, Frankfurt, Euroclear France or VPC. In these circumstances the investors will have no direct rights against the relevant Issuer and will only receive any Final Redemption Amount (in the case of Notes) or Cash Settlement Amount (in the case of Warrants and Certificates) and/or interest (in the case of Notes) or additional amounts (in the case of W&C Securities), if applicable, attributable to such Securities on the basis of the arrangements entered into with their banks or brokers. Furthermore, the Clearing System register will only show, and the relevant Issuer will only recognise, the nominee of such Clearing System as a Holder in respect of such Securities. In certain limited circumstances a Global Security or dematerialised securities may be exchangeable for definitive Securities. If this happens Holders will be notified.

***Will I be able to sell my Securities?***

Merrill Lynch or one of its affiliates may use its reasonable endeavours in normal market conditions to provide indicative bid and offer prices for the sale and purchase of Securities unless otherwise stated in the applicable Final Terms or Securities Note. However, it is not obliged to do so and may cease such activities at any time.

***What do I have to do to exercise my rights in respect of the Securities?***

Investors' rights relating to the Securities represented by a Global Security are governed by the procedures of the relevant Clearing Systems and the terms and conditions of the Securities, as completed, amended and supplemented in the applicable Final Terms. Investors should note that rights pertaining to certain Securities may expire if the Securities are not duly exercised prior to the specified cut-off date. An investor wanting rights in respect of Securities to be exercised on their behalf should contact their bank or broker.



It is important that you obtain, carefully read and understand the general terms and conditions and applicable Final Terms or applicable Securities Note for the Securities in which you are considering to invest.

***Is there a limit on the amount of Securities the relevant Issuer will issue for each series?***

Under the Programme, MLSA may issue Notes up to a total aggregate nominal value of EUR15,000,000,000. There is no limit on the number or total amount of Warrants and Certificates the Issuers can issue under the Programme. In respect of an issue of Securities, subject to the first sentence of this paragraph, there is no limit to the amount or number of Securities that the Issuer may issue. The Issuers can issue a series of Securities at any time without giving investors notice or obtaining their consent. Any additional Securities issued by the relevant Issuer will rank equally with all existing Securities issued by the relevant Issuer.

***How are payments made?***

In the case of Securities represented by a Global Security, the relevant Issuer will make payments by paying the total amount payable to the Clearing System(s) in accordance with the rules and policies of the Clearing Systems(s) or in the case of Warrants to the account specified by the Holder in the relevant Exercise Notice.

The Clearing System will credit the appropriate amount to the account of each Holder (which may include intermediaries such as banks or brokers), in accordance with its rules or policies.

Neither the relevant Issuers nor the Guarantor has an obligation to make payments directly to investors in the Securities. Each investor in the Securities must look to the Clearing System or its bank or broker for payments on such investor's Securities.

If the date specified for payment is not a business day, the relevant Issuer will make the relevant payment on the first following day that is a business day. On these occasions, the payment will be treated as if it were made on the original specified date for payment and will not be considered a late payment. Accordingly, the relevant Issuer will not be obliged to compensate the investor for the postponement. The term "Business Day" is defined within the terms and conditions of the Securities.

In the case of Physical Delivery Securities, delivery of the Entitlement will be made directly to the Holder in accordance with the delivery method specified in the terms and conditions.

## GENERAL DESCRIPTION OF THE PROGRAMME

Issuers:	Merrill Lynch S.A. Merrill Lynch International & Co C.V.
Guarantor:	Merrill Lynch & Co., Inc.
Description:	Note, Warrant and Certificate Programme
Guarantee:	The Securities are unconditionally and irrevocably guaranteed by ML&Co.
Calculation Agent:	Merrill Lynch International or such other calculation agent specified in the applicable Final Terms.
Arranger:	Merrill Lynch International
Securities	Securities of any kind may be issued, including, but not limited to Index Linked Securities, Share Linked Securities, Debt Linked Securities, GDR/ADR Linked Securities, FX Linked Securities, Commodity Linked Securities, Fund Linked Securities, Inflation Linked Securities and Credit Linked Notes and Certificates.
Status of the Securities:	Securities constitute direct, unsubordinated, unconditional and unsecured obligations of the relevant Issuer and rank equally among themselves and rank equally (subject to such exceptions as are from time to time provided by applicable laws) with all other present and future direct, unsubordinated, unconditional and unsecured indebtedness (in the case of Notes) or obligations (in the case of W&C Securities) of the relevant Issuer.
Status of the Guarantee:	The obligations of ML&Co. under the Guarantee, save for such exceptions as may be provided by applicable legislation or judicial order, rank pari passu with its other present and future unsecured and unsubordinated contractual obligations.
Approval, listing and admission to trading:	<p>Application has been made to the CSSF to approve this document as a base prospectus. Application has also been made to the Luxembourg Stock Exchange for Securities issued under the Programme to be admitted to trading on the Luxembourg Stock Exchange's regulated market and to be listed on the Official List of the Luxembourg Stock Exchange. Application has also been made to the Luxembourg Stock Exchange for Securities issued under the Programme during the 12 months from the date of this Base Prospectus to be admitted to trading on the Luxembourg Stock Exchange's alternative market – Euro MTF – and to be listed on the Official List of the Luxembourg Stock Exchange.</p> <p>Securities may be listed or admitted to trading, as the case may be, on such other or further stock exchange(s) or market(s) as determined by the relevant Issuer. Securities which are neither listed nor admitted to trading on any market may also be issued.</p>
Governing law:	The Securities and any non-contractual obligations arising out of or in connection with them will be governed by, and construed in accordance with, English law. The Guarantee will be governed by, and construed in accordance with, the laws of the State of New York.

## FORM OF THE SECURITIES

*Words and expressions defined in the "Terms and Conditions of the Notes" or "Terms and Conditions of the W&C Securities", as applicable, shall have the same meanings in this Form of the Securities.*

### Form of the Notes

Each Tranche of Notes will be in bearer form and will be initially issued in the form of a temporary global note (a **"Temporary Global Note"**) or, if so specified in the applicable Final Terms, a permanent global note (a **"Permanent Global Note"**) which, in either case, will:

- (i) if the Global Notes are intended to be issued in new global note (**"NGN"**) form, as stated in the applicable Final Terms, be delivered on or prior to the original issue date of the Tranche to a common safekeeper (the **"Common Safekeeper"**) for Euroclear Bank SA/NV (**"Euroclear"**) and Clearstream Banking, *société anonyme* (**"Clearstream, Luxembourg"**); and
- (ii) if the Global Notes are not intended to be issued in NGN Form, be delivered on or prior to the original issue date of the Tranche to a common depositary (the **"Common Depositary"**) for, Euroclear Bank S.A./N.V. (**"Euroclear"**) and Clearstream Banking, *société anonyme* (**"Clearstream, Luxembourg"**).

Whilst any Note is represented by a Temporary Global Note, payments of principal, interest (if any) and any other amount payable in respect of the Notes due prior to the Exchange Date (as defined below) will be made (against presentation of the Temporary Global Note if the Temporary Global Note is not intended to be issued in NGN form) only to the extent that certification (in a form to be provided) to the effect that the beneficial owners of interests in such Note are not U.S. persons or persons who have purchased for resale to any U.S. person, as required by U.S. Treasury regulations, has been received by Euroclear and/or Clearstream, Luxembourg and Euroclear and/or Clearstream, Luxembourg, as applicable, has given a like certification (based on the certifications it has received) to the Principal Paying Agent.

On and after the date (the **"Exchange Date"**) which is 40 days after a Temporary Global Note is issued, interests in such Temporary Global Note will be exchangeable (free of charge) upon a request as described therein either for (a) interests in a Permanent Global Note of the same Series or (b) for definitive Notes of the same Series with, where applicable, receipts, interest coupons and talons attached (as indicated in the applicable Final Terms and subject, in the case of definitive Notes, to such notice period as is specified in the applicable Final Terms), in each case against certification of beneficial ownership as described above unless such certification has already been given. The holder of a Temporary Global Note will not be entitled to collect any payment of interest, principal or other amount due on or after the Exchange Date unless, upon due certification, exchange of the Temporary Global Note for an interest in a Permanent Global Note or for definitive Notes is improperly withheld or refused.

Payments of principal, interest (if any) or any other amounts on a Permanent Global Note will be made through Euroclear and/or Clearstream, Luxembourg (against presentation or surrender (as the case may be) of the Permanent Global Note if the Permanent Global Note is not intended to be issued in NGN form) without any requirement for certification.

The applicable Final Terms will specify that a Permanent Global Note will be exchangeable (free of charge), in whole but not in part, for definitive Notes with, where applicable, receipts, interest coupons and talons attached upon either (a) not less than 60 days' written notice expiring at least 30 days after the Exchange Date from Euroclear and/or Clearstream, Luxembourg (acting on the instructions of any holder of an interest in such Permanent Global Note) to the Principal Paying Agent as described therein or (b) if the Issuer has been notified that both Euroclear and Clearstream, Luxembourg have been closed for business for a continuous period of 14 days (other than by reason of holiday, statutory or otherwise) or have announced an intention permanently to cease business or have in fact done so and no successor clearing system is available (an **"Exchange Event"**). The Issuer will promptly give notice to Noteholders in accordance with Note Condition 13 if an Exchange Event occurs. In the event of the occurrence of an Exchange Event, Euroclear and/or Clearstream, Luxembourg (acting on the instructions of any holder of an interest in such Permanent Global Note) may give notice to the Principal Paying Agent requesting exchange. Any such exchange shall occur not later than 45 days after the date of receipt of the first relevant notice by the Principal Paying Agent.

No definitive Note delivered in exchange for a Temporary Global Note or a Permanent Global Note, as the case may be, will be mailed or otherwise delivered to any location in the United States or its possessions during the restricted period (as such term is defined in U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D)(7)).

The following legend will appear on all Notes, definitive Notes, Receipts, and Coupons where such Notes have an original maturity of more than 183 days and on all receipts and interest coupons relating to such Notes:

"ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE INTERNAL REVENUE CODE."

The sections of the Code referred to provide that United States holders, with certain exceptions, will not be entitled to deduct any loss on Notes, Receipts or Coupons and will not be entitled to capital gains treatment of any gain on any sale, disposition or payment of principal with respect to Notes, Receipts or Coupons.

Notes with maturities of 183 days or less are required to be issued in minimum denominations of US\$500,000 (or its equivalent in other currencies).

The following legend will appear on all global Notes, definitive Notes, Receipts and Coupons where such Notes have maturities of 183 days or less and have denominations of US\$500,000 or more (or its equivalent in other currencies):

"BY ACCEPTING THIS OBLIGATION, THE HOLDER REPRESENTS AND WARRANTS THAT IT IS NOT A UNITED STATES PERSON (OTHER THAN AN EXEMPT RECIPIENT DESCRIBED IN SECTION 6049(b)(4) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER) AND THAT IT IS NOT ACTING FOR OR ON BEHALF OF A UNITED STATES PERSON (OTHER THAN AN EXEMPT RECIPIENT DESCRIBED IN SECTION 6049(b)(4) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER)."

#### **Form of Warrants**

If the applicable Final Terms specify that Warrants are eligible for sale exclusively in the United States or to, or for the account or benefit of, U.S. persons pursuant to an exemption from the registration requirements of the United States Securities Act of 1933, as amended (the "Securities Act"), the Warrants sold (a) in the United States to qualified institutional buyers within the meaning of Rule 144A ("Rule 144A") under the Securities Act ("QIBs") who are also each a qualified purchaser (each a "QP") within the meaning of Section 3(c)(7) and as defined in Section 2(a)(51) of the United States Investment Company Act of 1940, as amended (the "1940 Act") and the rules thereunder or (b) to, or for the account or benefit of, U.S. persons who are QIBs and also QPs will be represented by a Rule 144A Global Warrant (the "Rule 144A Global Warrant") either:

- (iii) deposited with the New York Warrant Agent as a custodian for, and registered in the name of a nominee of, DTC (subject to the execution by the relevant investor's DTC direct participant of a Custodian Letter in the form set out in the Agency Agreement); or
- (iv) deposited with a Common Depository for Euroclear and Clearstream, Luxembourg.

If specified in the applicable Final Terms, the Warrants may be sold (a) in the United States to QIBs who are also QPs or (b) to, or for the account or benefit of, U.S. persons who are QIBs and also QPs and, in either case, concurrently outside the United States to non-U.S. persons and will be represented by a Regulation S/Rule 144A Global Warrant (the "Regulation S/Rule 144A Global Warrant") which will be deposited with the Common Depository for Euroclear and Clearstream, Luxembourg.

If the applicable Final Terms indicate that the Warrants are not eligible for sale in the United States or to, or for the account or benefit of, U.S. persons and are to be issued into and transferred through accounts at Euroclear and Clearstream, Luxembourg, such series of Warrants will on issue be constituted by a permanent global warrant, which will be deposited with the Common Depository for Euroclear and Clearstream, Luxembourg.

If the applicable Final Terms indicate that the Warrants are not eligible for sale in the United States or to, or for the account or benefit of, U.S. persons and are to be issued into and transferred through accounts at Clearstream Banking AG, Frankfurt am Main ("**Clearstream, Frankfurt**"), such series of Warrants will on issue be constituted by a permanent global warrant, which will be deposited with Clearstream, Frankfurt.

If the applicable Final Terms indicate that such Warrants are not eligible for sale in the United States or to, or for the account or benefit of, U.S. persons and are to be issued into and transferred through accounts at Euroclear France S.A. ("**Euroclear France**"), such series of Warrants will on issue be constituted by a permanent global warrant, which will be deposited with Euroclear France.

If the applicable Final Terms indicate that such Warrants are not eligible for sale in the United States or to, or for the account or benefit of, U.S. persons and are to be issued into and cleared through the Swedish CSD, such series of Warrants will be issued in dematerialised and uncertificated book entry form in accordance with the Swedish Financial Instruments Accounts Act (in Swedish: *lag (1998: 1479) om kontoföring av finansiella instrument*).

Except in the limited circumstances specified in the W&C Securities Conditions, definitive Warrants will not be issued.

### **Form of Certificates**

If the applicable Final Terms indicate that the Certificates are to be issued into and transferred through accounts at Euroclear and Clearstream, Luxembourg, such series of Certificates will on issue be constituted by either a temporary global certificate in bearer form or a permanent global certificate in bearer form as indicated in the applicable Final Terms which, in either case, will be deposited with the Common Depositary for Euroclear and Clearstream, Luxembourg.

If the applicable Final Terms indicate that the Certificates are to be issued into and transferred through accounts at Clearstream, Frankfurt, such series of Certificates will on issue be constituted by either a temporary global certificate in bearer form or a permanent global certificate in bearer form as indicated in the applicable Final Terms which, in either case, will be deposited with Clearstream, Frankfurt.

If the applicable Final Terms indicate that the Certificates are to be issued into and transferred through accounts at Euroclear France, such series of Certificates will on issue be constituted by either a temporary global certificate in bearer form or a permanent global certificate in bearer form as indicated in the applicable Final Terms which, in either case, will be deposited with Euroclear France.

If the applicable Final Terms indicate that the Certificates ("**Swedish Dematerialised Certificates**") are to be issued into and cleared through the Swedish CSD, such series of Certificates will be issued in dematerialised and uncertificated book entry form in accordance with the Swedish Financial Instruments Accounts Act (in Swedish: *lag (1998: 1479) om kontoföring av finansiella instrument*) only to the extent that certification (in a form to be provided) to the effect that the beneficial owners of interest in such series of Swedish Dematerialised Certificates are not U.S. persons or persons who have purchased for resale to any U.S. person, as required by U.S. Treasury Regulations, has been received by the Swedish CSD.

Definitive Certificates will only be issued in the circumstances specified below and in the W&C Securities Conditions.

On or after the 40th day following the Issue Date of the Certificates, the temporary global certificate will be exchangeable (a) for a permanent global certificate or (b) for definitive Certificates in bearer form ("**Definitive Certificates**" and each a "**Definitive Certificate**"), in each case only to the extent that certification (in a form to be provided) to the effect that the beneficial owners of interests in such temporary global certificate are not U.S. persons or persons who have purchased for resale to any U.S. person, as required by U.S. Treasury Regulations, has been received by Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France, as applicable, and Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France, as applicable, has given a like certification (based on the certification received) to the Principal Certificate Agent. A permanent global certificate will be exchangeable (free of charge), in whole but not in part, for Definitive Certificates upon not less than 60 days' notice expiring at least 30 days after the Exchange Date from Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France, as applicable (acting on the instructions of any holder of an interest in such

permanent global certificate). No Definitive Certificate delivered in exchange for a temporary global certificate or a permanent global certificate, as the case may be, will be mailed or otherwise delivered to any location in the United States or its possessions during the restricted period (as such term is defined in U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D)(7)).

On or after the Issue Date of Swedish Dematerialised Certificates, a Certificateholder may request that all (but not some only) of its Certificates (each such Certificate an "Exchanged Certificate") be cancelled and exchanged (the date of such exchange the "Swedish Certificate Exchange Date") for Swedish Definitive Certificates of a separate Series, upon giving not less than 45 and not more than 90 days' notice to the relevant Issuer (such notice a "Swedish Certificate Exchange Notice"), subject to the delivery of certification (in a form to be provided) to the effect that the beneficial owner of interest in the Exchanged Certificate is not a U.S. person or a person who has purchased for resale to any U.S. person, as required by U.S. Treasury Regulations, on the Issue Date. Except in relation to the Issue Date and the Issue Price and as specified otherwise herein, a Swedish Definitive Certificate shall be issued on the same Terms and Conditions as the relevant Exchanged Certificate. No transfer of any Exchanged Certificate shall be permitted on or after the date of delivery of the Swedish Certificate Exchange Notice in respect of such Certificate. In the event that a Swedish Dematerialised Certificate is to be cancelled and exchanged as described herein, the relevant Issuer will notify the Swedish CSD and the Swedish Security Agent of such cancellation and exchange and the Swedish Security Agent will make available at its specified office on the Swedish Certificate Exchange Date a Swedish Definitive Certificate to the person registered as Holder in respect of the relevant Exchanged Certificate on the fifteenth Business Day prior to the Swedish Certificate Exchange Date. With effect from the Swedish Certificate Exchange Date the relevant Exchanged Certificate shall be cancelled with no amounts due to the Holder in respect of such cancellation. No amounts (including printing fees or other charges or expenses) shall be due and payable by the Holder in respect of the exchange of its Swedish Dematerialised Certificate(s) for Swedish Definitive Certificate(s). The provisions related to exercise and settlement in respect of Swedish Definitive Certificates shall be agreed between the relevant Issuer and the Swedish Security Agent prior to the Issue Date of such Certificates and shall be set out in the applicable Final Terms. No Swedish Definitive Certificate delivered in exchange for a Swedish Dematerialised Certificate will be mailed or otherwise delivered to any location in the United States or its possessions.

The following legend will appear on all Certificates in bearer form which have an original maturity of more than 183 days:

"ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE UNITED STATES INTERNAL REVENUE CODE".

Definitive Certificates with maturities of 183 days or less are required to be issued in minimum denominations of US\$500,000 (or its equivalent in other currencies).

The following legend will appear on all Definitive Certificates which have maturities of 183 days or less and have denominations of US\$500,000 or more (or its equivalent in other currencies):

"BY ACCEPTING THIS OBLIGATION, THE HOLDER REPRESENTS AND WARRANTS THAT IT IS NOT A UNITED STATES PERSON (OTHER THAN AN EXEMPT RECIPIENT DESCRIBED IN SECTION 6049(b)(4) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER) AND THAT IT IS NOT ACTING FOR OR ON BEHALF OF A UNITED STATES PERSON (OTHER THAN AN EXEMPT RECIPIENT DESCRIBED IN SECTION 6049(b)(4) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER)."

## FORM OF FINAL TERMS OF THE NOTES

[Date]

### MERRILL LYNCH S.A.

**Issue of [Aggregate Nominal Amount of Tranche] [Title of Notes]  
under the Merrill Lynch S.A. and Merrill Lynch International & Co. C.V.  
Note, Warrant and Certificate Programme  
unconditionally and irrevocably guaranteed as to payment and delivery obligations  
by Merrill Lynch & Co., Inc.**

[The Base Prospectus referred to below (as completed by these Final Terms) has been prepared on the basis that, except as provided in sub-paragraph (ii) below, any offer of Notes in any Member State of the European Economic Area which has implemented the Prospectus Directive (2003/71/EC) (each, a "**Relevant Member State**") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the Notes. Accordingly any person making or intending to make an offer of the Notes may only do so:

- (i) in circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer; or
- (ii) in those Public Offer Jurisdictions mentioned in Paragraph 56 of Part A below, provided such person is one of the persons mentioned in Paragraph 56 of Part A below and that such offer is made during the Offer Period specified for such purpose therein.

Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of Notes in any other circumstances].<sup>1</sup>

The Notes, the Guarantee and, in certain cases, the Entitlement have not been and will not be registered under the Securities Act or under any state securities laws and the Notes may not be offered, sold, transferred, pledged, delivered, redeemed, directly or indirectly, at any time within the United States or to, or for the account or benefit of, any U.S. person (as defined herein) except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. For the purposes hereof, "U.S. person" means (i) an individual who is a citizen or resident of the United States; (ii) a corporation, partnership or other entity treated as a corporation or partnership for United States federal income tax purposes, created or organised in or under the laws of the United States, any State thereof or the District of Columbia, or which has its principal place of business in the United States; (iii) any estate or trust which is subject to United States federal income taxation regardless of the source of its income; (iv) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and if one or more United States trustees have the authority to control all substantial decisions of the trust (or any trust which elected to be treated as a United States person prior to 20th August, 1996); (v) a pension plan for the employees, officers or principals of a corporation, partnership or other entity described in (ii) above; or (vi) any other "U.S. person" as such term may be defined in Regulation S under the Securities Act.

[The Base Prospectus referred to below (as completed by these Final Terms) has been prepared on the basis that any offer of Notes in any Member State of the European Economic Area which has implemented the Prospectus Directive (2003/71/EC) (each, a "**Relevant Member State**") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the Notes. Accordingly any person making or intending to make an offer in that Relevant Member State of the Notes may only do so in circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in

<sup>1</sup> Consider including this legend where a non-exempt offer of Notes is anticipated (N.B. Not relevant for an issue of a Tranche of Notes with a denomination equal to or greater than EUR 50,000 (or its equivalent in another currency).)

relation to such offer. Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of Notes in any other circumstances].<sup>2</sup>

## PART A – CONTRACTUAL TERMS

Terms used herein shall be deemed to be defined as such for the purposes of the Terms and Conditions set forth in the Base Prospectus dated 16th September, 2008 [and the supplement to the Base Prospectus dated ●] which [together] constitute[s] a base prospectus for the purposes of the Prospectus Directive (Directive 2003/71/EC) (the "**Prospectus Directive**"). This document constitutes the Final Terms of the Notes described herein for the purposes of Article 5.4 of the Prospectus Directive and must be read in conjunction with the Base Prospectus [as supplemented]. Full information on the Issuer, the Guarantor and the offer of the Notes is only available on the basis of the combination of these Final Terms and the Base Prospectus [as supplemented]. The Base Prospectus [and the supplement to the Base Prospectus] is [are] available for viewing during normal business hours at the registered office of the Issuer and at the specified office of the Paying Agents for the time being in London and Luxembourg and copies may be obtained from Merrill Lynch Financial Centre, 2 King Edward Street, London, EC1A 1HQ.

*[The following alternative language applies if the first tranche of an issue which is being increased was issued under a base prospectus/offering circular with an earlier date.]*

Terms used herein shall be deemed to be defined as such for the purposes of the Terms and Conditions (the "**Conditions**") set forth in the [Base Prospectus/Offering Circular] dated [original date] [and the supplement to the [Base Prospectus/Offering Circular] dated ●] [and incorporated by reference into the Base Prospectus dated 16th September, 2008]<sup>3</sup>. This document constitutes the Final Terms of the Notes described herein for the purposes of Article 5.4 of the Prospectus Directive (Directive 2003/71/EC) (the "**Prospectus Directive**") and must be read in conjunction with the Base Prospectus dated 16th September, 2008 [and the supplement to the Base Prospectus dated ●] which [together] constitute[s] a base prospectus for the purposes of the Prospectus Directive[, save in respect of the Conditions which are extracted from the [Base Prospectus/Offering Circular] dated [original date] and are attached hereto. Full information on the Issuer, the Guarantor and the offer of the Notes is only available on the basis of the combination of these Final Terms, the Base Prospectus dated 16th September, 2008 [the supplement to the Base Prospectus dated ●] and the [Base Prospectus/Offering Circular] dated [original date]].<sup>4</sup> Copies of [such/the] [Base Prospectus/es] [and Offering Circular] are available for viewing during normal business hours at the registered office of the Issuer and at the specified office of the Paying Agents at for the time being in London and Luxembourg and copies may be obtained from Merrill Lynch Financial Centre, 2 King Edward Street, London, EC1A 1HQ.

References herein to numbered Conditions are to the terms and conditions of the Notes and words and expressions defined in such terms and conditions shall bear the same meaning in these Final Terms, save as where otherwise expressly provided.

*[Include whichever of the following apply or specify as "Not Applicable" (N/A) or delete relevant provision]*

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

*[The purchase of Notes involves substantial risks and is suitable only for investors who have the knowledge and experience in financial and business matters necessary to enable them to evaluate the risks and the merits of an investment in the Notes. Before making an investment decision, prospective purchasers of Notes should ensure that they understand the nature of the Notes and the extent of their exposure to risks and that they consider carefully, in the light of their own financial circumstances, financial condition and investment objectives, all the information set forth in the Base Prospectus (including "Risk Factors" on pages 28 to 49 thereof) and these Final Terms.]*

<sup>2</sup> Consider including this legend where only an exempt offer of Notes is anticipated (N.B. Not relevant for an issue of a Tranche of Notes with a denomination equal to or greater than EUR 50,000 (or its equivalent in another currency).)

<sup>3</sup> Include where listing on London Stock Exchange.

<sup>4</sup> Delete where listing on London Stock Exchange.



[Prospective investors should note that, notwithstanding that the Terms and Conditions of the Notes set out in this Base Prospectus are governed by English law, the Notes, Receipts and Coupons are governed by, and construed in accordance with, the laws of the State of New York.]<sup>5</sup>

[Insert any specific additional risk factors]

[No person has been authorised to give any information or make any representation not contained in or not consistent with these Final Terms, or any other information supplied in connection with the Notes and, if given or made, such information or representation must not be relied upon as having been authorised by the Issuer, the Guarantor or any Dealer.]

[By investing in the Notes each investor represents that:

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

1. Issuer: Merrill Lynch S.A.

2. Guarantor: Merrill Lynch & Co., Inc.

3. (i) Series Number: [ ]

(ii) Tranche Number: [ ]

*If fungible with an existing Series, include details of that Series, including the date on which the Notes become fungible*

4. Specified Currency or Currencies: [ ]

5. Aggregate Nominal Amount:

(i) [Series:] [ ]

(ii) [Tranche:] [ ]

6. Issue Price: [ ] per cent. of the Aggregate Nominal Amount [plus accrued interest from [insert date] (in the case of fungible issues only, if applicable)]

7. (i) Specified Denominations: [ ]

[ ]

*[(Notes (including Notes denominated in Sterling) in respect of which the [issue proceeds] are to be accepted by the Issuer in the United Kingdom, or whose issue otherwise constitutes a contravention of section 19 FSMA and which have a maturity of*

<sup>5</sup> Include in the case of a tap issue where the Notes to be increased are issued pursuant to the previous MLSA EMTN Program terms and conditions incorporated by reference into this Base Prospectus which are governed by New York law.

*less than one year must have a [redemption value] of £100,000 (or its equivalent in other Specified Currencies))]*

*[If the Notes have a maturity of 183 days or less from their date of issue, the minimum denomination must be at least US\$500,000 or its equivalent in any other currency.]*

(ii) Calculation Amount: [ ]

*(If only one Specified Denomination, insert the Specified Denomination*

*If more than one Specified Denomination, insert the highest common factor. Note: There must be a common factor in the case of two or more Specified Denominations.)*

8. [(i)] Issue Date [and Interest Commencement Date]: [ ]

(ii) [Interest Commencement Date (if different from the Issue Date): [ ]]

9. Maturity Date: *[Fixed Rate Note - specify date/  
Floating Rate Note - Interest Payment Date falling on or nearest to [specify month]] [(the "Scheduled Maturity Date")]* [subject as provided in Credit Linked Condition 6 [./and] [Credit Linked Condition 7 [and] [Credit Linked Condition 8] (include for Credit Linked Notes)]

10. Interest Basis: [[ ] per cent. Fixed Rate]  
[[LIBOR/EURIBOR] +/- [ ] per cent. Floating Rate]  
[Zero Coupon]  
[Index Linked Interest]  
[Share Linked Interest]  
[Debt Linked Interest]  
[GDR/ADR Linked Interest]  
[FX Linked Interest]  
[Commodity Linked Interest]  
[Fund Linked Interest]  
[Inflation Linked Interest]  
[Non-Interest bearing]  
[specify other]  
[(further particulars specified below)]

11. Redemption/Payment Basis: [Redemption at par]  
[Index Linked Redemption]  
[Share Linked Redemption]  
[Debt Linked Redemption]  
[GDR/ADR Linked Redemption]  
[FX Linked Redemption]  
[Commodity Linked Redemption]  
[Fund Linked Redemption]  
[Inflation Linked Redemption]  
[Credit Linked Redemption]  
[Partly Paid]  
[Instalment]

[specify other]

*(N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)*

12. Change of Interest Basis or Redemption/ Payment Basis: [Applicable/Not Applicable]  
[Specify details of any provision for change of Notes into another Interest Basis or Redemption/ Payment Basis]
13. Put/Call Options: [Investor Put]  
[Issuer Call]  
[(further particulars specified below)]
14. (i) Status of the Notes: Senior  
(ii) Status of the Guarantee: Senior

**PROVISIONS RELATING TO INTEREST (IF ANY) PAYABLE**

15. Fixed Rate Notes [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- (i) Rate(s) of Interest: [ ] per cent. per annum [payable [annually/semi-annually/quarterly] in arrear]  
*(If payable other than annually, consider amending Condition 4)*  
*(Not applicable in the case of a flat coupon amount; in which case consider disapplying interest accrual provisions in relation to any Early Redemption Amount.)*
- (ii) Interest Payment Date(s): [[ ] in each year up to and including the Maturity Date]/[specify other]  
*(NB: This will need to be amended in the case of long or short coupons)*
- (iii) Fixed Coupon Amount(s): [ ] per Calculation Amount
- (iv) Broken Amount(s): [[ ] per Calculation Amount payable on the Interest Payment Date falling on [ ]/Not Applicable]  
*[Insert particulars of any initial or final broken interest amounts which do not correspond with the Fixed Coupon Amount(s)]*
- (v) Day Count Fraction: [Actual/Actual (ICMA)  
Actual/Actual (ISDA)  
Actual/365 (Fixed)  
Actual/365 (Sterling)  
Actual/360  
30/360 (ICMA)  
30/360  
30E/360  
30E/360 (ISDA)  
Other]

[(NB: Actual/Actual (ICMA) is normally only appropriate for Fixed Rate Notes denominated in euros)]

(vi) Determination Date(s): [ ] in each year

[Insert regular interest payment dates, ignoring issue date or maturity date in the case of a long or short first or last coupon (NB: This will need to be amended in the case of regular interest payment dates which are not of equal duration)]

(NB: Only relevant where Day Count Fraction is Actual/Actual (ICMA))

(vii) Other terms relating to the method of calculating interest for Fixed Rate Notes:

[None/Give details]

16. Floating Rate Notes

[Applicable/Not Applicable]

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

(i) Specified Period(s)/Specified Interest Payment Dates:

[ ]

(ii) Business Day Convention:

[Floating Rate Convention/Following Business Day Convention/Modified Following Business Day Convention/Preceding Business Day Convention/[specify other]]

(iii) Additional Business Centre(s):

[ ]

(iv) Manner in which the Rate of Interest and Interest Amount is to be determined:

[Screen Rate Determination/ISDA Determination/Range Accrual/specify other]

[If Range Accrual insert following language:

The Rate of Interest for each Interest Period shall be determined by the Calculation Agent in accordance with the following formula:

$\text{Coupon} \times (n/N)$

Where:

"Coupon" means [ ].

"n" means the total number of calendar days in the relevant Interest Period on which the Reference Rate (as defined below) is within the Range.

"N" means the actual number of calendar days in the relevant Interest Period.

"Range" means for each Interest Period in the period from (and including) [ ] to (but excluding) [ ], equal to or greater than zero but less than or equal to [ ] per cent.

"Reference Rate" means, in respect of a calendar day, the rate for deposits in [ ] for a period of [ ] months which appears on [insert page reference] (or such successor page or service as may in the determination of the [Calculation Agent]

replace such page or service) (the "Screen Page") as of [insert time] on such calendar day or if the Screen Page is not available or the relevant rate is not quoted and it is impossible or otherwise impracticable to obtain the relevant rate, the rate determined by the Calculation Agent in its sole discretion from such source(s) and at such time as it may select,

Provided That if a calendar day is not a Business Day the Reference Rate for such calendar day shall be the Reference Rate for the immediately preceding Business Day,

Provided Further That for each calendar day in an Interest Period falling after the seventh (7) Business Day prior to the [end of such Interest Period], the Reference Rate shall be the Reference Rate on such seventh (7) Business Day.

- (v) Party responsible for calculating the Rate of Interest and Interest Amount (if not the Principal Paying Agent): [            ]
- (vi) Screen Rate Determination: [Applicable/Not Applicable]  
*(if not applicable, delete the remaining sub-paragraphs of this paragraph)*
  - Reference Rate: [            ]  
*(Either LIBOR, EURIBOR or other, although additional information is required if other - including fallback provisions in the Agency Agreement)*
  - Interest Determination Date(s): [            ]  
*(Second London business day prior to the start of each Interest Period if LIBOR (other than Sterling or euro LIBOR), first day of each Interest Period if Sterling LIBOR and the second day on which the TARGET2 System is open prior to the start of each Interest Period if EURIBOR or euro LIBOR)*
  - Relevant Screen Page: [            ]  
*(In the case of EURIBOR, if not Reuters EURIBOR01 ensure it is a page which shows a composite rate or amend the fallback provisions appropriately)*
  - Rate Multiplier [Applicable/Not Applicable]  
*(specify formula)*
- (vii) ISDA Determination:
  - Floating Rate Option: [            ]
  - Designated Maturity: [            ]
  - Reset Date: [            ]
- (viii) Margin(s): [ +/- ] [    ] per cent. per annum
- (ix) Minimum Rate of [            ] per cent. per annum

- Interest:
- (x) Maximum Rate of Interest: [ ] per cent. per annum
- (xi) Day Count Fraction: [Actual/Actual (ICMA)  
30/360  
Actual/Actual (ISDA)  
Actual/365 (Fixed)  
Actual/365 (Sterling)  
Actual/360  
30/360 (ICMA)  
30/360  
30E/360  
30E/360 (ISDA)  
Other]  
(See Condition 4 for alternatives)
- (xii) Fall back provisions, rounding provisions and any other terms relating to the method of calculating interest on Floating Rate Notes, if different from those set out in the Terms and Conditions: [ ]
17. Zero Coupon Notes [Applicable/Not Applicable]  
(If not applicable, delete the remaining sub-paragraphs of this paragraph)
- (i) Accrual Yield: [ ] per cent. per annum
- (ii) Reference Price: [ ]
- (iii) Any other formula/basis of determining amount payable: [ ]
- (iv) Day Count Fraction in relation to Early Redemption Amounts and late payment: [Conditions [6(E)(c)] and [6(L)] apply/specify other]  
(Consider applicable day count fraction if not US\$ denominated)
18. Index Linked Interest Notes [Applicable/Not Applicable]  
(If not applicable, delete the remaining sub-paragraphs of this paragraph)  
[The provisions of Annex 1 of the Terms and Conditions – Additional Terms and Conditions for Index Linked Securities shall apply.]
- (i) Index/Basket of Indices/Index Sponsor(s): [ ]  
[The [ ] Index is a Multi-Exchange Index]  
[The Index Currency for the [ ] Index is [ ]]
- (ii) Formula for calculating interest rate including [ ]

- back up provisions:
- (iii) Calculation Agent responsible for making calculations in respect of the Notes: [      ]
  - (iv) Specified Period(s)/Specified Interest Payment Dates: [      ]
  - (v) Business Day Convention: [Floating Rate Convention/Following Business Day Convention/Modified Following Business Day Convention/Preceding Business Day Convention/*specify other*]
  - (vi) Additional Business Centre(s): [      ]
  - (vii) Minimum Rate of Interest: [      ] per cent. per annum
  - (viii) Maximum Rate of Interest: [      ] per cent. per annum
  - (ix) Day Count Fraction: [      ]
  - (x) Averaging: [The Averaging Dates are [      ].]  
[In the event that an Averaging Date is a Disrupted Day, [Omission/ Postponement/ Modified Postponement] will apply.]
  - (xi) Index Performance: [      ]
  - (xii) Exchange Rate: [Applicable/Not Applicable]  
[insert details]
  - (xiii) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Index Performance is [      ]. (*N.B. Only applicable in relation to Index Linked Notes relating to a Basket*)
  - (xiv) Exchange(s): [      ]
  - (xv) Related Exchange: [      ]/[All Exchanges]
  - (xvi) Valuation Date(s): [      ]
  - (xvii) Valuation Time: [      ]
  - (xviii) Observation Date(s): [      ]
  - (xix) Observation Period: [      ]
  - (xx) Disrupted Day: If a Valuation Date, an Averaging Date or an Observation Date, as the case may be, is a Disrupted Day, the relevant level or price will be calculated [*insert calculation method*]  
(*N.B. Only applicable where provisions in Index Linked Conditions are not appropriate*)
  - (xxi) Trade Date: [      ]
  - (xxii) Additional Disruption Events: The following Additional Disruption Events apply to the Notes:  
[Change of Law]

- [Hedging Disruption]  
[Increased Cost of Hedging]
- (xxiii) Other terms or special conditions: [            ]
19. Share Linked Interest Notes [Applicable/Not Applicable]  
*(If not applicable, delete remaining sub-paragraphs of this paragraph)*  
[The provisions of Annex 2 of the Terms and Conditions – *Additional Terms and Conditions for Share Linked Securities* shall apply.]
- (i) Share(s)/Basket of Share(s): [            ]
- (ii) Formula for calculating interest rate including back up provisions: [            ]
- (iii) Calculation Agent responsible for making calculations in respect of the Notes: [            ]
- (iv) Specified Period(s)/Specified Interest Payment Dates: [            ]
- (v) Business Day Convention: [Floating Rate Convention/Following Business Day Convention/Modified Following Business Day Convention/Preceding Business Day Convention/*specify other*]
- (vi) Additional Business Centre(s): [            ]
- (vii) Minimum Rate of Interest: [            ]
- (viii) Maximum Rate of Interest: [            ]
- (ix) Day Count Fraction: [            ]
- (x) Averaging: [The Averaging Dates are [            ].]  
[In the event that an Averaging Date is a Disrupted Day, [Omission/Postponement/Modified Postponement] will apply.]
- (xi) Share Performance: [            ]
- (xii) Exchange Rate: [Applicable/Not Applicable]  
[insert details]
- (xiii) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Share Performance is [            ]. (*N.B. Only applicable in relation to Share Linked Notes relating to a Basket*)
- (xiv) Exchange(s): [            ]
- (xv) Related Exchange: [            ]/[All Exchanges]



- (xvi) Valuation Date(s): [    ]
- (xvii) Valuation Time: [    ]
- (xviii) Observation Date(s): [    ]
- (xix) Observation Period: [    ]
- (xx) Disrupted Day: [If a Valuation Date, an Averaging Date or an Observation Date, as the case may be, is a Disrupted Day, the relevant price will be calculated *[insert calculation method]*  
(N.B. Only applicable where provisions in Share Linked Conditions are not appropriate)]
- (xxi) Tender Offer: [Applicable/Not Applicable]
- (xxii) Share Substitution: [Applicable/Not Applicable]  
[If Applicable: Share Substitution Criteria is [    ]]
- (xxiii) Local Tax Adjustment: [Applicable/Not Applicable]  
Local Jurisdiction: [    ]
- (xxiv) Trade Date: [    ]
- (xxv) Additional Disruption Events: The following Additional Disruption Events apply to the Notes:  
[Change of Law]  
[Hedging Disruption]  
[Increased Cost of Hedging]  
[Increased Cost of Stock Borrow]  
[Initial Stock Loan Rate: [    ]]  
[Insolvency Filing]  
[Loss of Stock Borrow]  
[Maximum Stock Loan Rate: [    ]]
- (xxvi) Other terms or special conditions: [    ]
20. Debt Linked Interest Note Provisions [Applicable/Not Applicable]  
(If not applicable, delete the remaining subparagraphs of this paragraph)  
[The provisions of Annex 3 of the Terms and Conditions - *Additional Terms and Conditions for Debt Linked Securities* shall apply.]
- (i) Debt Instruments/Basket of Debt Instruments: [    ]
- (ii) Debt Instrument Price: [    ]  
(N.B. Complete only if different from definition contained in Annex 3 of the Terms and Conditions - *Additional Terms and Conditions for Debt Linked Securities*)
- (iii) Formula for calculating interest rate including back up provisions: [    ]

- (iv) Calculation Agent responsible for making calculations in respect of the Notes: [ ]
- (v) Specified Period(s)/Specified Interest Payment Dates: [ ]
- (vi) Business Day Convention: [Floating Rate Convention/Following Business Day Convention/Modified Following Business Day Convention/Preceding Business Day Convention/specify other]
- (vii) Additional Business Centre(s): [ ]
- (viii) Minimum Rate of Interest: [ ]
- (ix) Maximum Rate of Interest: [ ]
- (x) Day Count Fraction: [ ]
- (xi) Averaging: Averaging [applies/does not apply] to the Notes. [The Averaging Dates are [ ].]
- (xii) Valuation Date(s): [ ]
- (xiii) Valuation Time: [ ]
- (xiv) Observation Period: [ ]
- (xv) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Debt Instrument Price is [ ]. (N.B. Only applicable in relation to Debt Linked Notes relating to a Basket)
- (xvi) Scheduled Trading Day: [ ]
- (xvii) Relevant Screen Page: [ ]
- (xviii) Redemption of Debt Instruments: Where one or more of the relevant Debt Instruments is redeemed (or otherwise ceases to exist) before the redemption of the Notes, [insert appropriate fallback provisions].
- (xix) Other terms or special conditions: [ ]
21. GDR/ADR Linked Interest Notes [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
 [The provisions of Annex 4 of the Terms and Conditions - Additional Terms and Conditions for GDR/ADR Linked Securities apply.]  
*(For GDR/ADR Linked Interest Notes complete sections for Share Linked Interest Notes (paragraph 19 above) (completed and amended as appropriate) and this section)*
22. FX Linked Interest Notes: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*

[The provisions of Annex 5 of the Terms and Conditions - *Additional Terms and Conditions for FX Linked Securities* shall apply.]

- (i) Base Currency/Subject Currency: [     ]
- (ii) Currency Price: [     ]  
*(N.B. Complete only if different from definition contained in Annex 5 of the Terms and Conditions - Additional Terms and Conditions for FX Linked Securities)*
- (iii) FX Market Disruption Event(s): Inconvertibility Event: [Applicable/Not Applicable]  
[other]  
*(N.B. Only complete if Inconvertibility Event and/or other disruption events should be included as FX Market Disruption Events)*
- (iv) FX Price Source(s): [     ]
- (v) Specified Financial Centre(s): [     ]
- (vi) Formula for calculating interest rate including back up provisions: [     ]
- (vii) Calculation Agent responsible for making calculations in respect of the Notes: [     ]
- (viii) Specified Period(s)/Specified Interest Period: [     ]
- (ix) Business Day Convention: [Floating Rate Convention/Following Business Day Convention/Modified Following Business Day Convention/Preceding Business Day Convention/specify other]
- (x) Additional Business Centre(s): [     ]
- (xi) Minimum Rate of Interest: [     ]
- (xii) Maximum Rate of Interest: [     ]
- (xiii) Day Count Fraction: [     ]
- (xiv) Averaging: Averaging [applies/does not apply] to the Notes. [The Averaging Dates are [     ].]
- (xv) Valuation Date(s): [     ]
- (xvi) Valuation Time: [     ]
- (xvii) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Currency Price is [     ].  
*(N.B. Only applicable in relation to FX Linked Notes relating to*

		a Basket)
	(xviii) Other terms or special conditions:	[ ]
23.	Commodity Linked Interest Notes	[Applicable/Not Applicable] <i>(If not applicable, delete the remaining sub-paragraphs of this paragraph)</i> [The provisions of Annex 6 of the Terms and Conditions - <i>Additional Terms and Conditions for Commodity Linked Securities</i> shall apply.]
	(i) Commodity/Commodities/Commodity Index/Basket of Commodity Indices:	[ ]
	(ii) Formula for calculating interest rate including back up provisions:	[ ]
	(iii) Calculation Agent responsible for making calculations in respect of the Notes:	[ ]
	(iv) Specified Period(s)/Specified Interest Payment Dates:	[ ]
	(v) Business Day Convention:	[Floating Rate Convention/Following Business Day Convention/Modified Following Business Day Convention/Preceding Business Day Convention/specify other]
	(vi) Additional Business Centre(s):	[ ]
	(vii) Minimum Rate of Interest:	[ ]
	(viii) Maximum Rate of Interest:	[ ]
	(ix) Day Count Fraction:	[ ]
	(x) Commodity Reference Price:	[ ]
	(xi) Price Source:	[ ]
	(xii) Exchange:	[ ]
	(xiii) Delivery Date:	[ ]
	(xiv) Pricing Date:	[ ]
	(xv) Common Pricing:	[Applicable/Not Applicable] (N.B. Only applicable in relation to Commodity Linked Notes relating to a Basket)
	(xvi) Additional Commodity Market Disruption Events:	[specify any applicable additional Commodity Market Disruption Events]

- Additional provisions for Commodity Trading Disruption: [Not Applicable]  
[If Trading Disruption applies, specify any additional futures contracts, options contracts or commodities and the related exchange to which Trading Disruption relates]
- Disruption Fallback(s): [As set out in Commodity Linked Conditions]/[ ]  
Commodity Index Cut-Off Date: [ ]
- (xvii) Commodity Business Day: [ ]
- (xviii) Trade Date: [ ]
- (xix) Weighting: The weighting to be applied to each item comprising the Basket is [ ]  
*(N.B. Only applicable in relation to Commodity Linked Notes relating to a Basket)*
- (xx) Specified Price: [high price]  
[low price]  
[average of the high price and the low price]  
[closing price]  
[opening price]  
[bid price]  
[asked price]  
[average of the bid price and the asked price]  
[settlement price]  
[official settlement price]  
[official price]  
[morning fixing]  
[afternoon fixing]  
[spot price]  
[other]
- (xxi) Other terms or special conditions: [ ]
24. Fund Linked Interest Notes [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
[The provisions of Annex 7 of the Terms and Conditions – *Additional Terms and Conditions for Fund Linked Securities* shall apply.]
- (i) Fund/Basket of Funds: [ ] [The [ ] Fund is an ETF.]  
[[The Exchange for each Fund Share: [ ]]]  
[Related Exchange for each Fund Share: [ /All Exchanges]]  
[Underlying Index for each ETF: [ ]]  
*(N.B. Include for ETFs)*
- (ii) Fund Interests: [ ]
- (iii) Formula for calculating interest rate including [ ]

- back up provisions:
- (iv) Calculation Agent responsible for making calculations in respect of the Notes: [      ]
  - (v) Specified Period(s)/Specified Interest Payment Dates: [      ]
  - (vi) Business Day Convention: [Floating Rate Convention/Following Business Day Convention/Modified Following Business Day Convention/Preceding Business Day Convention/specify other]
  - (vii) Additional Business Centre(s): [      ]
  - (viii) Minimum Rate of Interest: [      ] per cent. per annum
  - (ix) Maximum Rate of Interest: [      ] per cent. per annum
  - (x) Day Count Fraction: [      ]
  - (xi) Trade Date: [      ]
  - (xii) Valuation Date(s): [      ]
  - (xiii) Valuation Time: [      ]
  - (xiv) Other terms or special conditions: [      ]
25. Inflation Linked Interest Notes: [Applicable/Not Applicable]
- (If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- [The provisions of Annex 8 of the Terms and Conditions – Additional Terms and Conditions for Inflation Linked Securities shall apply.]*
- (i) Inflation Index/Basket of Inflation Indices/Inflation Index Sponsor(s): [      ]
  - (ii) Formula for calculating interest rate including back up provisions: [      ]
  - (iii) Calculation Agent responsible for making calculations in respect of the Notes: [      ]
  - (iv) Specified Period(s)/Specified Interest Payment Dates: [      ]
  - (v) Business Day Convention: [Floating Rate Convention/Following Business Day Convention/Modified Following Business Day Convention/Preceding Business Day Convention/specify other]

- (vi) Additional Business Centre(s): [      ]
- (vii) Minimum Rate of Interest: [      ] per cent. per annum
- (viii) Maximum Rate of Interest: [      ] per cent. per annum
- (ix) Day Count Fraction: [      ]
- (x) Related Bond: [Applicable/Not Applicable]  
The Related Bond is: [      ] [Fallback Bond]  
The End Date is: [      ]
- (xi) Determination Date(s): [      ]
- (xii) Cut-Off Date: [      ]
- (xiii) Other terms or special conditions: [      ]

## PROVISIONS RELATING TO REDEMPTION

26. Issuer Call: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- (i) Optional Redemption Date(s): [      ]
  - (ii) Optional Redemption Amount(s) of each Note and method, if any, of calculation of such amount(s): [      ] per Calculation Amount
  - (iii) If redeemable in part:
    - (a) Minimum Redemption Amount: [      ]
    - (b) Maximum Redemption Amount: [      ]
  - (iv) Notice period (if other than as set out in the Conditions): [      ]
27. Investor Put: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- (i) Optional Redemption Date(s): [      ]
  - (ii) Optional Redemption Amount(s) of each Note and method, if any, of calculation of such [      ] per Calculation Amount

- amount(s):
- (iii) Notice period (if other than as set out in the Conditions): [      ]
28. Automatic Early Redemption: [Applicable/Not Applicable]  
*(If not applicable, delete remaining sub-paragraphs of this paragraph)*
- (i) Automatic Early Redemption Event: [      ]
- (ii) Automatic Early Redemption Amount: [      ] per Calculation Amount
- (iii) Automatic Early Redemption Date: [      ]
29. Final Redemption Amount of each Note: [[      ] per Calculation Amount/specify other/Not Applicable  
*(For Index Linked, Share Linked, Debt Linked, GDR/ADR Linked, FX Linked, Commodity Linked, Fund Linked and Inflation Linked Redemption Notes and Credit Linked Notes state "Not Applicable" and complete relevant section in paragraphs [31] – [39] below)*  
*(N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)*
30. Early Redemption Amount(s) of each Note payable on redemption for taxation reasons or on an event of default or on an illegality (or, in the case of Index Linked Notes, following an Index Adjustment Event or Additional Disruption Event in accordance with the Index Linked Conditions or, in the case of Share Linked Notes and/or GDR/ADR Linked Notes following certain corporate events or Additional Disruption Event in accordance with the Share Linked Conditions and/or the GDR/ADR Linked Conditions, as applicable, or in the case of Fund Linked Notes, following a Fund Event or, in the case of Inflation Linked Notes, following the Cessation in Publication of an Inflation Index in accordance with the Inflation Linked Conditions and/or the method of calculating the same (if required or if different from that set out in Condition 6(E)): [      /Market Value less Associated Costs /Other] per Calculation Amount  
*(N.B. In the case of Index Linked, Share Linked, Debt Linked, GDR/ADR Linked, FX Linked, Commodity Linked, Fund Linked and Inflation Linked Redemption Notes and Credit Linked Notes, consider deducting the cost to the Issuer and/or its affiliates of unwinding or adjusting any underlying or related funding and/or hedging arrangements in respect of the Notes)*



31. Index Linked Redemption Notes: [Applicable/Not Applicable]
- (If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- [The provisions of Annex 1 of the Terms and Conditions – *Additional Terms and Conditions for Index Linked Securities* shall apply.]
- (i) Index/Basket of Indices/  
Index Sponsor(s): [ ]
- [The [ ] Index is a Multi-Exchange Index]
- [The Index Currency for the [ ] Index is [ ]]
- (ii) Calculation Agent  
responsible for making  
calculations in respect of  
the Notes: [ ]
- (iii) Final Redemption  
Amount: [ ] per Calculation Amount
- (N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)
- (iv) Averaging: [The Averaging Dates are [ ].]
- [In the event that an Averaging Date is a Disrupted Day, [Omission/ Postponement/ Modified Postponement] will apply.]
- (v) Index Performance: [ ]
- (vi) Exchange Rate: [Applicable/Not Applicable]
- [insert details]
- (vii) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Index Performance is [ ]. (N.B. Only applicable in relation to Index Linked Notes relating to a Basket)
- (viii) Exchange(s): [ ]
- (ix) Related Exchange: [ ]/[All Exchanges]
- (x) Valuation Date(s): [ ]
- (xi) Valuation Time: [ ]
- (xii) Observation Date(s): [ ]
- (xiii) Observation Period: [ ]
- (xiv) Disrupted Day: If a Valuation Date, an Averaging Date or an Observation Date, as the case may be, is a Disrupted Day, the relevant level or price will be calculated [insert calculation method]
- (N.B. Only applicable where provisions in Index Linked Conditions are not appropriate)
- (xv) Trade Date: [ ]
- (xvi) Additional Disruption The following Additional Disruption Events apply to the Notes:

- Events: [Change of Law]  
[Hedging Disruption]  
[Increased Cost of Hedging]
- (xvii) Other terms or special conditions: [ ]
32. Share Linked Redemption Notes: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
[The provisions of Annex 2 of the Terms and Conditions – *Additional Terms and Conditions for Share Linked Securities* shall apply.]
- (i) Share(s) / Basket of Shares: [ ]
- (ii) Calculation Agent responsible for making calculations in respect of the Notes: [ ]
- (iii) Final Redemption Amount: [ ] per Calculation Amount  
*(N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)*
- (iv) Averaging: [The Averaging Dates are [ ]].  
[In the event that an Averaging Date is a Disrupted Day, [Omission/Postponement/Modified Postponement] will apply.]
- (v) Share Performance: [ ]
- (vi) Exchange Rate: [Applicable/Not Applicable]  
[insert details]
- (vii) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Share Performance is [ ]. *(N.B. Only applicable in relation to Share Linked Notes relating to a Basket)*
- (viii) Exchange(s): [ ]
- (ix) Related Exchange: [ ]/[All Exchanges]
- (x) Valuation Date(s): [ ]
- (xi) Valuation Time: [ ]
- (xii) Observation Date(s): [ ]
- (xiii) Observation Period: [ ]
- (xiv) Disrupted Day: [If a Valuation Date, an Averaging Date or an Observation Date, as the case may be, is a Disrupted Day, the relevant price will be calculated [insert calculation method].  
*(N.B. Only applicable where provisions in Share Linked*

- Conditions are not appropriate)*
- (xv) Tender Offer: [Applicable/Not Applicable]
- (xvi) Share Substitution: [Applicable/Not Applicable]  
[If Applicable: Share Substitution Criteria is [    ]]
- (xvii) Local Tax Adjustment: [Applicable/Not Applicable]  
Local Jurisdiction [    ]
- (xviii) Trade Date: [    ]
- (xix) Additional Disruption Events: The following Additional Disruption Events apply to the Notes:  
[Change of Law]  
[Hedging Disruption]  
[Increased Cost of Hedging]  
[Increased Cost of Stock Borrow]  
[Initial Stock Loan Rate: [    ]]  
[Insolvency Filing]  
[Loss of Stock Borrow]  
[Maximum Stock Loan Rate: [    ]]
- (xx) Other terms or special conditions: [    ]
33. Debt Linked Redemption Notes: [Not Applicable/Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
[The provisions of Annex 3 of the Terms and Conditions - *Additional Terms and Conditions for Debt Linked Securities* shall apply.]
- (i) Debt Instruments/Basket of Debt Instruments: [    ]
- (ii) Debt Instrument Price: [    ]  
*(N.B. Complete only if different from definition contained in Annex 3 of the Terms and Conditions - Additional Terms and Conditions for Debt Linked Securities)*
- (iii) Calculation Agent responsible for making calculations in respect of the Notes: [    ]
- (iv) Final Redemption Amount: [    ] per Calculation Amount  
*(N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)*
- (v) Averaging: Averaging [applies/does not apply] to the Notes. [The Averaging Dates are [    ].]

- (vi) Valuation Date(s): [ ]
- (vii) Valuation Time: [ ]
- (viii) Observation Period: [ ]
- (ix) Weighting: Weighting to be applied to each item comprising the Basket to ascertain the Debt Instrument Price is [ ]. (N.B. Only applicable in relation to Debt Linked Notes relating to a Basket)
- (x) Scheduled Trading Day: [ ]
- (xi) Relevant Screen Page: [ ]
- (xii) Redemption of Debt Instruments: Where one or more of the relevant Debt Instruments is redeemed (or otherwise ceases to exist) before the redemption of the Notes, [insert appropriate fallback provisions].
- (xiii) Other terms or special conditions: [ ]
34. GDR/ADR Linked Redemption Notes: [Applicable/Not Applicable]  
 (If not applicable, delete the remaining sub-paragraphs of this paragraph)  
 [The provisions of Annex 4 of the Terms and Conditions – Additional Terms and Conditions for GDR/ADR Linked Securities shall apply.]  
 (For GDR/ADR Linked Redemption Notes complete sections for Share Linked Redemption Notes (paragraph 32 above) (completed and amended as appropriate) and this section)
35. FX Linked Redemption Notes: [Applicable/Not Applicable]  
 (If not applicable, delete the remaining sub-paragraphs of this paragraph)  
 [The provisions of Annex 5 of the Terms and Conditions – Additional Terms and Conditions for FX Linked Securities shall apply.]
- (i) Base Currency/Subject Currency: [ ]
- (ii) Currency Price: [ ]  
 (N.B. Complete only if different from definition contained in Annex 5 of the Terms and Conditions - Additional Terms and Conditions for FX Linked Securities)
- (iii) FX Market Disruption Event(s): Inconvertibility Event: [Applicable/Not Applicable]  
 [other]  
 (N.B. Only complete if Inconvertibility Event and/or other disruption events should be included as FX Market Disruption Events)
- (iv) FX Price Source(s): [ ]
- (v) Specified Financial Centre(s): [ ]

- (vi) Calculation Agent responsible for making calculations in respect of the Notes: [      ]
- (vii) Final Redemption Amount: [      ] per Calculation Amount  
*(N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)*
- (viii) Averaging: Averaging [applies/does not apply] to the Notes. [The Averaging Dates are [      ].]
- (ix) Valuation Date(s): [      ]
- (x) Valuation Time: [      ]
- (xi) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Currency Price is [      ].  
*(N.B. Only applicable in relation to FX Linked Notes relating to a Basket)*
- (xii) Other terms or special conditions: [      ]
36. Commodity Linked Redemption Notes: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
 [The provisions of Annex 6 of the Terms and Conditions – Additional Terms and Conditions for Commodity Linked Securities shall apply.]
- (i) Commodity/Basket of Commodities/Commodity Index/Basket of Commodity Indices: [      ]
- (ii) Calculation Agent responsible for making calculations in respect of the Notes: [      ]
- (iii) Final Redemption Amount: [      ] per Calculation Amount  
*(N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)*
- (iv) Commodity Reference Price: [      ]
- (v) Price Source: [      ]
- (vi) Exchange: [      ]
- (vii) Delivery Date: [      ]

- (viii) Pricing Date: [      ]
- (ix) Common Pricing: [Applicable] [Not Applicable] *(N.B. Only applicable in relation to Commodity Linked Notes relating to a Basket)*
- (x) Additional Commodity Market Disruption Events: *[specify any additional Commodity Market Disruption Events]*
- Additional provisions for Commodity Trading Disruption: [Not Applicable]  
*[If Trading Disruption applies, specify any additional futures contracts, options contracts or commodities and the related exchange to which Trading Disruption relates]*
- Disruption Fallback(s): [As set out in Commodity Linked Conditions]/[      ]  
 [Commodity Index Cut-Off Date: [      ]]
- (xi) Commodity Business Day: [      ]
- (xii) Trade Date: [      ]
- (xiii) Weighting: The weighting to be applied to each item comprising the Basket is [      ]  
*(N.B. Only applicable in relation to Commodity Linked Notes relating to a Basket)*
- (xiv) Specified Price: [high price]  
 [low price]  
 [average of the high price and the low price]  
 [closing price]  
 [opening price]  
 [bid price]  
 [asked price]  
 [average of the bid price and the asked price]  
 [settlement price]  
 [official settlement price]  
 [official price]  
 [morning fixing]  
 [afternoon fixing]  
 [spot price]  
 [other]
- (xv) Other terms or special conditions: [      ]
37. Fund Linked Redemption Notes: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
 [The provisions of Annex 7 of the Terms and Conditions – Additional Terms and Conditions for Fund Linked Securities shall apply.]
- (i) Fund/Basket of Funds: [      ]  
 [[The [ ] Fund is an ETF]  
 [Exchange for each Fund Share: [ ]]

[Related Exchange for each Fund Share: [     ] /All Exchanges]]

[Underlying Index: [     ]]  
(N.B. Include for ETFs)

(ii) Fund Interest(s): [     ]

(iii) Calculation Agent  
responsible for making  
calculation in respect of  
the Notes: [     ]

(iv) Final Redemption  
Amount: [     ] per Calculation Amount

*(N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)*

(v) Trade Date: [     ]

(vi) Valuation Date(s): [     ]

(vii) Valuation Time: [     ]

(viii) Other terms or special  
conditions: [     ]

38. Inflation Linked Redemption  
Notes: [Applicable/Not Applicable]

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

[The provisions of Annex 8 of the Terms and Conditions –  
Additional Terms and Conditions for Inflation Linked Securities  
shall apply.]

(i) Inflation Index/Basket of  
Inflation Indices/Inflation  
Index Sponsor(s): [     ]

(ii) Calculation Agent  
responsible for making  
calculations in respect of  
the Notes: [     ]

(iii) Final Redemption  
Amount: [     ] per Calculation Amount

*(N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)*

(iv) Related Bond: [Applicable/Not Applicable]

The Related Bond is: [     ] [Fallback Bond]

The End Date is: [     ]

(v) Determination Date(s): [     ]

(vi) Cut-Off Date: [     ]

- (vii) Other terms or special conditions: [      ]
39. Credit Linked Notes: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
 [The provisions of Annex 9 - *Additional Terms and Conditions for Credit Linked Notes* and Certificates shall apply.]
- (i) Final Redemption Amount: [      ] per Calculation Amount  
*(N.B. If the Final Redemption Amount is other than 100 per cent. of the nominal value the Notes will be derivative securities for the purposes of the Prospectus Directive and the requirements of Annex XII to the Prospectus Directive Regulation will apply.)*
- (ii) Trade Date: [      ]
- (iii) Calculation Agent responsible for making calculations and determinations in respect of the Notes: [      ]
- (iv) Reference Entity(ies): [      ]
- (v) Reference Obligation(s): [      ]  
 [The obligation[s] identified as follows: [      ]  
 Primary Obligor: [      ]  
 Guarantor: [      ]  
 Maturity: [      ]  
 Coupon: [      ]  
 CUSIP/ISIN: [      ]
- (vi) All Guarantees: [Applicable/Not Applicable]  
 – Provisions relating to Qualifying Guarantee and Underlying Obligation: Credit Linked Condition 15 [Applicable/Not Applicable]
- (vii) Credit Events: [Bankruptcy]  
 [Failure to Pay]  
     [Grace Period Extension [Applicable/Not Applicable]  
     [If Applicable:  
         Grace Period: [      ]  
     [Obligation Default]  
     [Obligation Acceleration]  
     [Repudiation/Moratorium]  
     [Restructuring]  
 – Provisions relating to Restructuring Credit Event:



		Credit Linked Condition 12 [Applicable/Not Applicable]
	–	Provisions relating to Multiple Holder Obligation: Credit Linked Condition 13 [Applicable/Not Applicable]
	–	[Restructuring Maturity Limitation and Fully Transferable Obligation [Applicable/Not Applicable]]
	–	[Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation [Applicable/Not Applicable]]
		[other]
	Default Requirement:	[      ]
	Payment Requirement:	[      ]
(viii)	Conditions to Settlement:	Notice of Publicly Available Information [Applicable/Not Applicable]
		[If Applicable:
	Public Source(s):	[      ]]
	Specified Number:	[      ]]
(ix)	Obligation(s):	
	Obligation Category	[Payment]
	[select one only]:	[Borrowed Money]
		[Reference Obligations Only]
		[Bond]
		[Loan]
		[Bond or Loan]
	Obligation Characteristics	
	[select all of which apply]:	[Not Subordinated]
		[Credit Linked Specified Currency:
		[specify currency] [Standard Specified Currencies]
		[Not Sovereign Lender]
		[Not Domestic Currency:]
		[Domestic Currency means: [specify currency]]
		[Not Domestic Law]
		[Listed]
		[Not Domestic Issuance]
	Additional Obligation(s)	[      ]
(x)	Excluded Obligation(s):	[      ]
(xi)	[Whether on satisfaction of Conditions to Settlement during the Notice Delivery Period	Conditions to Settlement - [Cash Settlement/Physical Delivery]]
		[If Physical Delivery:
		The provisions of Annex 10 of the Terms and Conditions –

	redemption of the Notes will be by (a) Cash Settlement or (b) Physical Delivery:	<i>Additional Terms and Conditions for Physical Delivery Notes shall apply</i>
(xii)	Accrual of Interest upon Credit Event:	[Applicable/Not Applicable]
(xiii)	Merger Event:	Credit Linked Condition 11 [Applicable/Not Applicable] (If Applicable) [Merger Event Redemption Amount: [     ]] [Merger Event Redemption Date:[     ]]
(xiv)	Unwind Costs:	[Standard Unwind Costs/other/Not Applicable]
(xv)	Provisions relating to Monoline Insurer as Reference Entity:	Credit Linked Condition 14 [Applicable/Not Applicable]
(xvi)	Provisions relating to LPN Reference Entities:	Credit Linked Condition 16 [Applicable/Not Applicable]
(xvii)	Provisions relating to Deliverable Obligations Portfolio Valuation:	Credit Linked Condition 17 [Applicable/Not Applicable]
	[If applicable:	[     ]]
	Benchmark Obligation:	[     ]]
		<i>(N.B. If Deliverable Obligation Category and Deliverable Obligation Characteristics should also be completed if Credit Linked Condition 17 applies)</i>
<i>Terms relating to Cash Settlement</i>		
(xviii)	Credit Event Redemption Amount:	[     ] per Calculation Amount
(xix)	Credit Event Redemption Date:	[     ] Business Days
(xx)	Valuation Date:	[Single Valuation Date: [     ] Business Days] [Multiple Valuation Dates: [     ] Business Days; and each [     ] Business Days thereafter Number of Valuation Dates: [     ]]
(xxi)	Valuation Time:	[     ]
(xxii)	Quotation Method:	[Bid/Offer/Mid-market]
(xxiii)	Quotation Amount:	[[     ]/Representative Amount]
(xxiv)	[Minimum Quotation Amount:	[     ]]
(xxv)	Quotation Dealers:	[     ]

(xxvi) Quotations:	[Include Accrued Interest/Exclude Accrued Interest]
(xxvii) Valuation Method:	[Market/Highest]
	[Average Market/Highest/Average Highest]
	[Blended Market/Blended Highest]
	[Average Blended Market/Average Blended Highest]
(xxviii) Other terms or special conditions:	[       ]
<i>Terms relating to Physical Delivery</i>	
(xxix) Physical Settlement Period:	[       ] Business Days
(xxx) Accrued Interest on Entitlement:	[Include Accrued Interest/Exclude Accrued Interest]
(xxxi) Settlement Currency:	[       ]
(xxxii) Deliverable Obligations:	
Deliverable Obligation Category	[Payment]
[select one only]:	[Borrowed Money]
	[Reference Obligations Only]
	[Bond]
	[Loan]
	[Bond or Loan]
Deliverable Obligation Characteristics	[Not Subordinated]
[select all of which apply]:	[Credit Linked Specified Currency: <i>[specify currency]</i> ]
	[Standard Specified Currencies]
	[Not Sovereign Lender]
	[Not Domestic Currency]
	[Domestic Currency means: <i>[specify currency]</i> ]
	[Not Domestic Law]
	[Listed]
	[Not Contingent]
	[Not Domestic Issuance]
	[Assignable Loan]
	[Consent Required Loan]
	[Direct Loan Participation]
	[Qualifying Participation Seller: <i>[insert details]</i> ]
	[Transferable]
	[Maximum Maturity: [       ]]
	[Accelerated or Matured]

		[Not Bearer]
	Additional Deliverable Obligation(s):	[      ]
	(xxxiii) Excluded Deliverable Obligation(s):	[      ]
	(xxxiv) Indicative Quotations:	[Applicable/Not Applicable]
	(xxxv) Cut-Off Date:	[      ]
	(xxxvi) Guaranteed Cash Settlement Amount:	[      ]
	(xxxvii) Delivery provisions for Entitlement if different from Physical Delivery Note Conditions:	[      ]
	(xxxviii) Other terms or special conditions:	[      ]
40.	Physical Delivery Notes:	[Applicable/Not Applicable]
	<i>(If not applicable, delete the remaining sub-paragraphs of this paragraph)</i>	
	<i>(N.B. Not applicable to Credit Linked Notes)</i>	
	<i>[Cash Settlement/Physical Delivery/Cash Settlement and/or Physical Delivery] (If Cash Settlement and/or Physical Delivery specified, specify details for determining in what circumstances Cash Settlement or Physical Delivery will apply)</i>	
	<i>[The provisions of Annex 10 of the Terms and Conditions - Additional Terms and Conditions for Physical Delivery Notes shall apply.]</i>	
	(i) Relevant Asset(s):	[      ]
	(ii) Entitlement:	[      ]
	(iii) Cut-Off Date:	[      ]
	(iv) Guaranteed Cash Settlement Amount:	[      ]
	(v) Failure to Deliver due to Illiquidity:	[Applicable/Not Applicable]
	(vi) Delivery provisions for Entitlement if different from Physical Delivery Note Conditions:	[      ]
	(vii) Settlement Business Day:	[      ]
	(viii) Issuer's option to vary Settlement:	[Applicable/Not Applicable]
	(ix) Other terms or special Conditions:	[      ]

## GENERAL PROVISIONS APPLICABLE TO THE NOTES

41. Form of Notes: [Temporary Global Note exchangeable for a Permanent Global Note which is exchangeable for Definitive Notes [on 60 days' notice expiring at least 30 days after the Exchange Date or upon an Exchange Event]  
[Temporary Global Note exchangeable for Definitive Notes on and after the Exchange Date]  
[Permanent Global Note exchangeable for Definitive Notes [on 60 days' notice expiring at least 30 days after the Exchange Date or upon an Exchange Event]  
*(Ensure that this is consistent with the wording in the "Form of the Securities" section in the Base Prospectus and the Notes themselves.)*
42. New Global Note: [Yes][No]
43. Payment Day: [Following/Modified Following]
44. Additional Financial Centre(s) or other special provisions relating to Payment Dates: [Not Applicable/give details]  
*(Note that this item relates to the place of payment and not Interest Period end dates to which items 16(iii), 18(vi), 19(vi), 20(vii), 22(xi), 23(vi), 24(vii) and 25(vi) relate)*
45. Talons for future Coupons or Receipts to be attached to Definitive Notes (and dates on which such Talons mature): [Yes/No][If yes, give details]
46. Details relating to Partly Paid Notes: amount of each payment comprising the Issue Price and date on which each payment is to be made and consequences of failure to pay, including any right of the Issuer to forfeit the Notes and interest due on late payment: [Not Applicable/give details]  
*(NB: a new form of Temporary Global Note and/or Permanent Global Note may be required for Partly Paid issues)*
47. Details relating to Instalment Notes:  
(i) Instalment Amount(s): [Not Applicable/give details]  
(ii) Instalment Date(s): [Not Applicable/give details]
48. Redenomination applicable: Redenomination [not] applicable  
*[(If Redenomination is applicable, specify the terms of Redenomination in the Final Terms)]*
49. Other final terms: [Not Applicable/give details]  
*(When adding any other final terms consideration should be given as to whether such amendments would be acceptable as Final Terms or whether such terms constitute "significant new factors" and consequently trigger the need for a supplement to the Base Prospectus under Article 16 of the Prospectus Directive or the use of a Securities Note or "unitary" Prospectus.) [(Consider including a term providing for tax certification if required to enable interest to be paid gross by*

issuers.))]

## DISTRIBUTION

50. Method of distribution: [Syndicated/Non-syndicated]
51. (i) If syndicated, [names and addresses]<sup>\*\*\*</sup> of Managers [and underwriting commitments]<sup>\*\*\*</sup>: [Not Applicable/give names, [and addresses and underwriting commitments]<sup>\*\*\*</sup>]  
(Including names and addresses of entities agreeing to underwrite the issue on a firm commitment basis and names and addresses of the entities agreeing to place the issue without a firm commitment or on a "best efforts" basis if such entities are not the same as the Managers)<sup>\*\*\*</sup>
- (ii) Date of Subscription Agreement<sup>\*\*\*</sup>: [ ]
- (iii) Stabilising Manager(s) (if any): [Not Applicable/give name]
52. If non-syndicated, name [and address]<sup>\*\*\*</sup> of relevant Dealer: [Not Applicable/give Name [and address]<sup>\*\*\*</sup>]
53. Total commission and concession:<sup>\*\*</sup> [ ] per cent. of the Aggregate Nominal Amount<sup>\*\*</sup>
54. U.S. Selling Restrictions: [Reg. S Compliance Category [●]; TEFRA D/TEFRA not applicable]
55. Additional U.S. Tax considerations [Not Applicable/give details]
56. Non exempt Offer:<sup>\*\*</sup> [Not Applicable] [An offer of the Notes may be made by the Managers [and [specify names [and addresses] of other financial intermediaries making non-exempt offers, to the extent known OR consider a generic description of other parties involved in non-exempt offers (e.g. "other parties authorised by the Managers") or (if relevant) note that other parties may make non-exempt offers in the Public Offer Jurisdictions during the Offer Period, if not known]] (together with the Managers, the "Financial Intermediaries") other than pursuant to Article 3(2) of the Prospectus Directive in [specify relevant Member State(s) - which must be jurisdictions where the Base Prospectus and any supplements have been passported (in addition to the jurisdiction where approved and published)] ("Public Offer Jurisdictions") during the period from [specify date] until [specify date or a formula such as "the Issue Date" or "the date which falls [●] Business Days thereafter"] ("Offer Period"). See further Paragraph 17 of Part B below.  
(N.B. Consider any local regulatory requirements necessary to be fulfilled so as to be able to make a non-exempt offer in relevant jurisdictions. No such offer should be made in any relevant jurisdiction until those requirements have been met. Non-exempt offers may only be made into jurisdictions in which the base prospectus (and any supplement) has been notified/passported.)
57. Additional selling restrictions: [Not Applicable/give details]

## **PURPOSE OF FINAL TERMS**

These Final Terms comprise the final terms required for issue [and] [public offer in the Public Offer Jurisdictions] [and] [admission to the Official List and [trading on the regulated market of the Luxembourg Stock Exchange] [trading on the Luxembourg Stock Exchange's alternative market - Euro MTF] of the Notes described herein pursuant to the Note, Warrant and Certificate Programme of Merrill Lynch S.A. and Merrill Lynch International & Co. C.V.

## **RESPONSIBILITY**

[[Subject as provided below,] the Issuer and the Guarantor accept responsibility for the information contained in these Final Terms.] [The information relating to ● [and ●] contained herein has been accurately extracted from [*insert information source(s)*]. The Issuer and the Guarantor accept responsibility for the accuracy of such extraction but accept no further or other responsibility in respect of such information.]

Signed on behalf of the Issuer:

By:.....

*Duly authorised*

## PART B – OTHER INFORMATION

### 1. LISTING AND ADMISSION TO TRADING

- (i) Listing and Admission to trading: [Application [has been]/[will be] made by the Issuer (or on its behalf) for the Notes to be admitted to trading on, [the regulated market of/the alternative market – Euro MTF – of], and listed on the Official List of, the Luxembourg Stock Exchange [with effect from [ ]].] [Application is expected to be made by the Issuer (or on its behalf) for the Notes to be admitted to trading on, [the regulated market of/the alternative market – Euro MTF – of,] and listed on the Official List of, the Luxembourg Stock Exchange with effect from [ ]].] [Not Applicable.]

*(N.B. Notes issued by MLSA should be listed on a "recognised stock exchange".)*

*(Where documenting a fungible issue need to indicate that original securities are already admitted to trading)\*\*\**

- (ii) Estimate of total expenses related to admission to trading: \*/\*\*\*\* [ ]

### 2. RATINGS

Ratings:

The Notes to be issued have been rated:

[S&P: [ ]]

[Ratings and Investment Information Inc.: [ ]]

[Moody's: [ ]]

[Fitch: [ ]]

[[Other]: [ ]]

*[Need to include a brief explanation of the meaning of the ratings if this has previously been published by the rating provider.]*

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

### 3. INTERESTS OF NATURAL AND LEGAL PERSONS INVOLVED IN THE ISSUE

[Save for any fees payable to the [Managers/Dealers], so far as the Issuer is aware, no person involved in the issue of the Notes has an interest material to the offer – amend as appropriate if there are other interests]

*[(When adding any other description, consideration should be given as to whether such matters described constitute "significant new factors" and consequently trigger the need for a supplement to the Base Prospectus under Article 16 of the Prospectus Directive or the use of a Securities Note or "unitary" prospectus.)]*

### 4. REASONS FOR THE OFFER, ESTIMATED NET PROCEEDS AND TOTAL EXPENSES\*\*\*

- (i) [Reasons for offer [ ]]

*(See "Use of Proceeds" wording in Base Prospectus – if*



*reasons for offer different from making profit and/or hedging certain risks will need to include those reasons here)*

(ii) Estimated net proceeds: [ ]

*(If proceeds are intended for more than one use will need to split out and present in order or priority. If proceeds insufficient to fund all proposed uses state amount and sources of other funding)*

(iii) Estimated total expenses: [ ] *(Expenses are required to be broken down into each principal intended to "use" and presented in order of priority of such "uses")*

*(N.B.: If the Notes are derivative securities to which Annex XII of the Prospectus Directive Regulation applies (i) above is required where the reasons for the offer are different from making profit and/or hedging certain risks regardless of the minimum denomination of the securities and where this is the case disclosure of net proceeds and total expenses at (ii) and (iii) above are also required.)*

**5. YIELD (Fixed Rate Notes only)\*\*\*\***

Indication of yield: [ ]

*[Calculated as [include details of method of calculation in summary form] on the Issue Date.]\*\**

*The yield is calculated at the Issue Date on the basis of the Issue Price. It is not an indication of future yield.*

**6. HISTORIC INTEREST RATES (Floating Rate Notes only)\*\***

*Details of historic [EURIBOR / LIBOR /other] rates can be obtained from [Reuters].*

**7. PERFORMANCE OF [INDEX/BASKET OF INDICES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING THE [INDEX/BASKET OF INDICES] (INDEX LINKED NOTES ONLY)**

*[Need to include details of where past and future performance and volatility of [the/each] index can be obtained, the relevant weighting of each index within a basket of indices and where pricing information is available]. [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]\*\*\**

*[Need to include the name of [the/each] index, the name of [the/each] index sponsor and a description if composed by the Issuer and if the index is not composed by the Issuer need to include details of where the information about [the/each] index can be obtained.]\*\*\**

**8. PERFORMANCE OF [THE SHARE/BASKET OF SHARES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE SHARE/BASKET OF SHARES]] (SHARE LINKED NOTES ONLY)**

*[Need to include details of the name of [the/each] share company, any security identification number of the shares, where pricing information about the shares is available, the relevant weighting of each share within a basket of shares (if relevant) and where past and future performance and volatility of the [share/basket of shares] can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]\*\*\**

**9. INFORMATION IN RELATION TO THE DEBT INSTRUMENT/INSTRUMENTS, EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING THE DEBT INSTRUMENT/INSTRUMENTS] (DEBT LINKED NOTES ONLY)**

*[Need to include details of the name of the issuer, the ISIN (International Securities Identification Number) of the debt instrument(s), the relevant weighting of each debt instrument in a basket of debt instruments (if relevant) and where pricing information on and where past and future performance and volatility of the debt instrument(s) can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]\*\*\**

**10. PERFORMANCE OF [THE GDR/ADRS], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE GDR/ADRS]] (GDR/ADR LINKED NOTES ONLY)**

*[Need to include details of the name of [the/each] GDR and/or ADR, any security identification number of the GDRs and/or ADRs, where pricing information about the GDRs and/or ADRs is available, and where past and future performance and volatility of the GDRs and/or ADRs can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the GDRs and/or ADRs and the circumstances when the risks are most evident.]\*\*\**

**11. PERFORMANCE OF [RATE[S] OF EXCHANGE/CURRENCIES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE [RATE[S] OF EXCHANGE/FORMULA/CURRENCIES]] (FX LINKED NOTES ONLY)**

*[Need to include details of [the/each] currency, where past and future performance and volatility of the [relevant rates/currencies] can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]\*\*\**

**12. PERFORMANCE OF [THE COMMODITY/BASKET OF COMMODITIES/COMMODITY INDEX/BASKET OF COMMODITY INDICES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE COMMODITY/BASKET OF COMMODITIES/COMMODITY INDEX/BASKET OF COMMODITY INDICES]] (COMMODITY LINKED NOTES ONLY)**

*[Need to include details of [the/each] [commodity/commodity index], where pricing information about [the/each] [commodity/commodity index] is available, the relevant weighting of each [commodity/commodity index] within a basket of [commodities/commodity indices] and where past and future performance and volatility of [the commodity/basket of commodities/commodity index/basket of commodity indices] can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]\*\*\**

**13. PERFORMANCE OF [THE FUND/BASKET OF FUNDS], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE FUND/BASKET OF FUNDS]] (FUND LINKED NOTES ONLY)**

*[Need to include details of [the/each] fund, the relevant weighting of each fund within a basket of funds and where past and future performance and volatility of [the/each] [fund/basket of funds] can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]\*\*\**

**14. PERFORMANCE OF [INFLATION INDEX/BASKET OF INFLATION INDICES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [INFLATION INDEX/BASKET OF INFLATION INDICES]] (INFLATION LINKED NOTES ONLY)**

*[Need to include details of where past and future performance and volatility of [the/each] inflation index can be obtained, the relevant weighting of each inflation index within a basket of indices and where pricing information is available]. [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]\*\*\**

*[Need to include the name of [the/each] inflation index, the name of [the/each] inflation index sponsor and a description if composed by the Issuer and if the inflation index is not composed by the Issuer need to include details of where the information about [the/each] inflation index can be obtained.]\*\*\**

**15. PERFORMANCE OF [THE/EACH] REFERENCE ENTITY, EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE/EACH] REFERENCE ENTITY] (CREDIT LINKED NOTES ONLY)**

*[Need to include details of [the/each] reference entity and where information on [the/each] reference entity can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]\*\*\**

**16. OPERATIONAL INFORMATION**

(i) ISIN Code: [ ]

(ii) Common Code: [ ]

(iii) Any clearing system(s) other than Euroclear Bank S.A./N.V., Clearstream Banking, *société anonyme* and the relevant identification number(s): [Not Applicable/give name(s) and number(s)]

(iv) Delivery: Delivery [against/free of] payment

(v) Names and addresses of initial Paying Agents:

(vi) Names and addresses of additional Paying Agent(s) (if any): [ ]

(vii) Intended to be held in a manner which would allow Eurosystem eligibility. [Yes][No]

*[Note that the designation "yes" simply means that the Notes are intended upon issue to be deposited with one of the ICSDs as common safekeeper and does not necessarily mean that the Notes will be recognised as eligible collateral for Eurosystem monetary policy and intra-day credit operations by the Eurosystem either upon issue or at any or all times during their life. Such recognition will depend upon satisfaction of the Eurosystem eligibility criteria.] [include this text if "yes" selected in which case the Notes must be issued in NGN form]*

**17. TERMS AND CONDITIONS OF THE OFFER (*Public Offer only*)\*\***

Offer Price:	[Issue Price/Not Applicable/ <i>specify</i> ]
[Conditions to which the offer is subject:]	[Not Applicable/ <i>give details</i> ]
[Description of the application process:]	[Not Applicable/ <i>give details</i> ]
[Details of the minimum and/or maximum amount of application:]	[Not Applicable/ <i>give details</i> ]
[Description of possibility to reduce subscriptions and manner for refunding excess amount paid by applicants:]	[Not Applicable/ <i>give details</i> ]
[Details of the method and time limits for paying up and delivering the Notes:]	[Not Applicable/ <i>give details</i> ]
[Manner and date in which results of the offer are to be made public:]	[Not Applicable/ <i>give details</i> ]
[Procedure for exercise of any right of pre-emption, negotiability of subscription rights and treatment of subscription rights not exercised:]	[Not Applicable/ <i>give details</i> ]
[Categories of potential investors to which the Notes are offered and whether tranche(s) have been reserved for certain countries:]	[Not Applicable/ <i>give details</i> ]
[Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made:]	[Not Applicable/ <i>give details</i> ]
[Amount of any expenses and taxes specifically charged to the subscriber or purchaser:]	[Not Applicable/ <i>give details</i> ]
[Name(s) and address(es), to the extent known to the Issuer, of the placers in the various countries where the offer takes place.]	[None/ <i>give details</i> ]

\* *Delete if minimum denomination is less than €50,000 (or its equivalent in the relevant currency as at the date of issue)*

\*\* *Delete if minimum denomination is €50,000 (or its equivalent in the relevant currency as at the date of issue)*

\*\*\* *Delete if minimum denomination is €50,000 (or its equivalent in the relevant currency as at the date of issue) and if the securities are not Derivative Securities*

\*\*\*\* *Delete if the securities are Derivative Securities*

## TERMS AND CONDITIONS OF THE NOTES

*The following are the Terms and Conditions of the Notes which will be incorporated by reference into each Global Note (as defined below) and each definitive Note, in the latter case only if permitted by the relevant stock exchange or other relevant authority (if any) and agreed by the Issuer and the relevant Dealer at the time of issue but, if not so permitted and agreed, such definitive Note will have endorsed thereon or attached thereto such Terms and Conditions. The applicable Final Terms in relation to any Tranche of Notes may specify other terms and conditions (including the Additional Terms and Conditions described below) which shall, to the extent so specified or to the extent inconsistent with the following Terms and Conditions, replace or modify the following Terms and Conditions for the purpose of such Notes. The Registration Document (the "Registration Document") relating to the Programme and applicable Summary (if applicable) and Securities Note (the "Securities Note") relating to a particular series of Notes may also be used in connection with the issue of Notes under the Programme and such applicable Securities Note may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with the following Terms and Conditions, replace or modify the following Terms and Conditions for the purpose of such Notes. To the extent that Notes are issued pursuant to a Securities Note, references in the following Terms and Conditions to the "Final Terms" shall be read as references to the "Securities Note" in respect of such series of Notes, and all such references shall be construed accordingly. The applicable Final Terms (or the relevant provisions thereof) will be endorsed upon, or attached to, each Global Note and definitive Note. Reference should be made to "Form of the Notes" for a description of the content of Final Terms which will specify which of such terms are to apply in relation to the relevant Notes.*

*The Additional Terms and Conditions contained in Annex 1 in the case of Index Linked Notes, Annex 2 in the case of Share Linked Notes, Annex 3 in the case of Debt Linked Notes, Annex 4 in the case of GDR/ADR Linked Notes, Annex 5 in the case of FX Linked Notes, Annex 6 in the case of Commodity Linked Notes, Annex 7 in the case of Fund Linked Notes, Annex 8 in the case of Inflation Linked Notes, Annex 9 in the case of Credit Linked Notes and Annex 10 in the case of Physical Delivery Notes (each as defined below) will apply to the Notes if specified in the applicable Final Terms.*

This Note is one of a Series (as defined below) of notes (the "Notes") issued by Merrill Lynch S.A. ("MLSA" or the "Issuer").

References herein to the "Notes" shall be references to the Notes of this Series and shall mean:

- (a) in relation to any Notes represented by a global Note (a "Global Note"), units of each Specified Denomination in the Specified Currency;
- (b) any Global Note; and
- (c) any definitive Notes issued in exchange for a Global Note.

The Notes, the Receipts (as defined below) and the Coupons (as defined below) have the benefit of an agency agreement dated 16th September, 2008 (such agency agreement as amended and/or supplemented and/or restated from time to time, the "Agency Agreement") and made between MLSA, Merrill Lynch International & Co. C.V., Merrill Lynch & Co., Inc. ("ML&Co." or the "Guarantor"), Deutsche Bank AG, London Branch as principal paying agent (the "Principal Paying Agent") and if so specified in the applicable Final Terms, as calculation agent (the "Calculation Agent"), Deutsche Bank Luxembourg S.A. (together with the Principal Paying Agent, the "Paying Agents" which expression shall include any additional or successor paying agents) and the other agents named therein.

Interest bearing definitive Notes have interest coupons ("Coupons") and, if indicated in the applicable Final Terms, talons for further Coupons ("Talons") attached on issue. Any reference herein to Coupons or coupons shall, unless the context otherwise requires, be deemed to include a reference to Talons or talons. Definitive Notes repayable in instalments have receipts ("Receipts") for the payment of the instalments of principal (other than the final instalment) attached on issue. Global Notes do not have Receipts, Coupons or Talons attached on issue.

The Final Terms for this Note (or the relevant provisions thereof) are set out in Part A of the Final Terms attached to or endorsed on this Note which supplement these Terms and Conditions (the "Terms and

**Conditions**", or the "**Conditions**") and may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with these Terms and Conditions, replace or modify these Terms and Conditions for the purposes of this Note. References to the "applicable Final Terms" are to Part A of the Final Terms (or the relevant provisions thereof) attached to or endorsed on this Note.

The payment of principal, interest and all other amounts payable and/or deliverable in respect of this Note are unconditionally and irrevocably guaranteed by the Guarantor pursuant to a guarantee (the "**Guarantee**") dated 16th September, 2008 executed by the Guarantor. The original of the Guarantee is held by the Principal Paying Agent on behalf of the Noteholders, the Receiptholders and the Couponholders at its specified office.

Any reference to "Noteholders" or "Holders" in relation to any Notes shall mean the holders of the Notes and shall, in relation to any Notes represented by a Global Note, be construed as provided below. Any reference herein to "**Receiptholders**" shall mean the holders of the Receipts and any reference herein to "**Couponholders**" shall mean the holders of the Coupons and shall, unless the context otherwise requires, include the holders of the Talons.

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

The Noteholders, the Receiptholders and the Couponholders are entitled to the benefit of the Deed of Covenant (the "**Deed of Covenant**") dated 16th September, 2008 and made by the Issuer. The original of the Deed of Covenant is held by the common depositary for Euroclear and Clearstream, Luxembourg (each as defined below).

Copies of the Agency Agreement, the Guarantee and the Deed of Covenant are available for inspection during normal business hours at the specified office of each of the Paying Agents. Copies of the applicable Final Terms are available for viewing at the specified office of the Issuer or the Paying Agents and copies may be obtained from those specified offices save that, if this Note is neither admitted to trading on a regulated market in the European Economic Area nor offered in the European Economic Area in circumstances where a prospectus is required to be published under the Prospectus Directive, the applicable Final Terms will only be obtainable by a Noteholder holding one or more Notes and such Noteholder must produce evidence satisfactory to the Issuer and the relevant Paying Agent as to its holding of such Notes and identity. The Prospectus and, in the case of Notes admitted to trading on the regulated market of the Luxembourg Stock Exchange, the applicable Final Terms will also be published on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)). The Noteholders, the Receiptholders and the Couponholders are deemed to have notice of, and are entitled to the benefit of, all the provisions of the Agency Agreement, the Guarantee, the Deed of Covenant and the applicable Final Terms which are applicable to them. The statements in these Terms and Conditions include summaries of, and are subject to, the detailed provisions of the Agency Agreement.

Words and expressions defined in the Agency Agreement or used in the applicable Final Terms shall have the same meanings where used in these Terms and Conditions unless the context otherwise requires or unless otherwise stated and provided that, in the event of inconsistency between the Agency Agreement and the applicable Final Terms, the applicable Final Terms will prevail.

## **1. Form, Denomination and Title**

The Notes are in bearer form and, in the case of definitive Notes, serially numbered, in the Specified Currency and the Specified Denomination(s). Notes of one Specified Denomination may not be exchanged for Notes of another Specified Denomination. Notes with maturities of 183 days or less will have a minimum denomination of US\$500,000 (or its equivalent in other currencies). Unless otherwise specified in the applicable Final Terms, the Notes will be issued in Classic Global Note ("**CGN**") form.

This Note may be a Fixed Rate Note, a Floating Rate Note, a Zero Coupon Note, an Index Linked Interest Note, a Share Linked Interest Note, a Debt Linked Interest Note, a GDR/ADR Linked

Interest Note, a FX Linked Interest Note, a Commodity Linked Interest Note, a Fund Linked Interest Note, an Inflation Linked Interest Note or a combination of any of the foregoing depending on the Interest Basis specified in the applicable Final Terms.

This Note may be an Instalment Note, a Partly Paid Note, an Index Linked Redemption Note (together with Index Linked Interest Notes, "**Index Linked Notes**"), a Share Linked Redemption Note (together with Share Linked Interest Notes, "**Share Linked Notes**"), a Debt Linked Redemption Note (together with Debt Linked Interest Notes, "**Debt Linked Notes**"), a GDR/ADR Linked Redemption Note (together with GDR/ADR Linked Interest Notes, "**GDR/ADR Linked Notes**"), a FX Linked Redemption Note (together with FX Linked Interest Notes, "**FX Linked Notes**"), a Commodity Linked Redemption Note (together with Commodity Linked Interest Notes, "**Commodity Linked Notes**"), a Fund Linked Redemption Note (together with Fund Linked Interest Notes, "**Fund Linked Notes**"), an Inflation Linked Redemption Note (together with Inflation Linked Interest Notes, "**Inflation Linked Notes**"), a Credit Linked Note, or a combination of any of the foregoing, depending upon the Redemption/Payment Basis specified in the applicable Final Terms.

Definitive Notes are issued with Coupons attached, unless they are Zero Coupon Notes in which case references to Coupons and Couponholders in these Terms and Conditions are not applicable.

If the applicable Final Terms specify that the Note is a Physical Delivery Note, being a Note to be redeemed by delivery of the Entitlement, Annex 10 to the Terms and Conditions - *Additional Terms and Conditions for Physical Delivery Notes* shall apply.

Subject as set out below, title to the Notes, Receipts and Coupons will pass by delivery. The Issuer, the Guarantor and the Paying Agents will (except as otherwise required by law) deem and treat the bearer of any Note, Receipt or Coupon as the absolute owner thereof (whether or not overdue and notwithstanding any notice of ownership or writing thereon or notice of any previous loss or theft thereof) for all purposes but, in the case of any Global Note, without prejudice to the provisions set out in the next succeeding paragraph.

For so long as any of the Notes is represented by a Global Note held on behalf of Euroclear Bank S.A./N.V. ("**Euroclear**") and/or Clearstream Banking, *société anonyme* ("**Clearstream, Luxembourg**"), each person (other than Euroclear or Clearstream, Luxembourg) who is for the time being shown in the records of Euroclear or of Clearstream, Luxembourg as the holder of a particular nominal amount of such Notes (in which regard any certificate or other document issued by Euroclear or Clearstream, Luxembourg as to the nominal amount of such Notes standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by the Issuer, the Guarantor and the Paying Agents as the holder of such nominal amount of such Notes for all purposes other than with respect to the payment of principal or interest on such nominal amount of such Notes, for which purpose the bearer of the relevant Global Note shall be treated by the Issuer, the Guarantor and any Paying Agent as the holder of such nominal amount of such Notes in accordance with and subject to the terms of the relevant Global Note and the expressions "Noteholder" and "holder of Notes" and related expressions shall be construed accordingly.

Notes which are represented by a Global Note will be transferable only in accordance with the rules and procedures for the time being of Euroclear and Clearstream, Luxembourg, as the case may be.

References to Euroclear and/or Clearstream, Luxembourg shall, whenever the context so permits, be deemed to include a reference to any additional or alternative clearing system specified in the applicable Final Terms.

## **2. Status of the Notes and the Guarantee**

### **(A) Status of the Notes and Guarantee**

The Notes constitute direct, unsubordinated, unconditional and unsecured obligations of the Issuer and rank equally among themselves and rank equally (subject to exceptions as are from time to time provided by applicable laws) with all other present and future direct, unsubordinated, unconditional and unsecured indebtedness of the Issuer.

The obligations of the Guarantor, under the Guarantee, save for such exceptions as may be provided by applicable legislation or judicial order, rank *pari passu* with its other present and future unsecured and unsubordinated indebtedness.

**(B) Terms of the Guarantee**

Under the Guarantee, the Guarantor has unconditionally and irrevocably guaranteed to the Noteholders, (i) the due and punctual payment of any and all amounts payable by the Issuer as obligor in respect of the Notes and (ii) subject as provided below, the due and punctual performance of any and all obligations of the Issuer with respect to physical delivery of non-cash consideration deliverable by the Issuer in respect of the Notes, if applicable, when and as the same shall become due and payable or when the same shall become due for performance pursuant to the Conditions and to the extent provided in the Guarantee. As more fully set forth in the Guarantee, the Guarantor shall at all times have the right, at its sole and unfettered discretion, to elect not to deliver or procure delivery of the Entitlement to the holders of such Physical Delivery Notes when the same shall become due and deliverable, but in lieu thereof to pay an amount in cash equal to the guaranteed cash settlement amount calculated pursuant to the terms of, or as specified in, the relevant Final Terms or Securities Note (the "**Guaranteed Cash Settlement Amount**"). Any payment of the Guaranteed Cash Settlement Amount in lieu of the Entitlement shall constitute a complete discharge of the Guarantor's obligations in respect of such Physical Delivery Notes.

**(C) Negative Pledge and Covenants of the Guarantor**

The Guarantor will not, and it will not permit any Subsidiary at any time directly or indirectly to, create, assume or incur any indebtedness for borrowed money secured by a pledge of, lien on or security interest in (any pledge, lien or security interest being hereinafter in this paragraph referred to as a "lien") the Voting Stock of any Significant Subsidiary without making effective provision whereby the Notes and Coupons appertaining thereto, if any (and, if the Guarantor so elects, any other indebtedness ranking on a parity with the Guarantee), shall be secured equally and rateably with such secured indebtedness so long as such other indebtedness shall be so secured; provided, however, that the foregoing covenant shall not be applicable to liens for taxes or assessments or governmental charges or levies not then due and delinquent or the validity of which is being contested in good faith or which are less than US\$5,000,000 in amount, liens created by or resulting from any litigation or legal proceeding which is currently being contested in good faith by appropriate proceedings or which involve claims of less than US\$5,000,000, or deposits to secure (or in lieu of) surety, stay, appeal or customs bonds; provided, further, that the foregoing shall not be applicable to indebtedness for borrowed money secured by a lien on any shares of the Voting Stock of any Person existing at the time such Person becomes a Significant Subsidiary, including extensions, renewals and replacements of such indebtedness without increase in the amount thereof.

As used herein:

**"Consolidated Net Worth"** means consolidated assets minus consolidated liabilities as calculated in accordance with generally accepted accounting principles.

**"Person"** means any individual, corporation, partnership, joint venture, association, limited liability company, joint-stock company, trust, unincorporated organisation or government or any agency or political subdivision thereof.

**"Significant Subsidiary"** means any Subsidiary the Consolidated Net Worth of which constituted at least 15 per cent. of the Consolidated Net Worth of the Guarantor as of the end of the most recently completed fiscal year.

**"Subsidiary"** means any corporation of which at the time of determination the Guarantor and/or one or more subsidiaries owns or controls directly or indirectly more than 50 per cent. of the shares of Voting Stock.

**"Voting Stock"** means stock of the class or classes having general voting power under ordinary circumstances to elect at least a majority of the board of directors, managers or trustees of such person provided that, for purposes hereof, stock which carries only the right to vote conditionally on



the happening of an event shall not be considered voting stock whether or not such event shall have happened.

### **3. Redenomination**

#### **(A) Redenomination**

Where redenomination is specified in the applicable Final Terms as being applicable, the Issuer may, without the consent of the Noteholders, the Receiptholders and the Couponholders on giving prior notice to the Principal Paying Agent, Euroclear and Clearstream, Luxembourg and at least 30 days' prior notice to the Noteholders in accordance with Condition 13, elect that, with effect from the Redenomination Date specified in the notice, the Notes shall be redenominated in euro.

The election will have effect as follows:

- (a) the Notes and the Receipts shall be deemed to be redenominated in euro in the denomination of euro 0.01 with a nominal amount for each Note and Receipt equal to the nominal amount of that Note or Receipt in the Specified Currency, converted into euro at the Established Rate, provided that, if the Issuer determines, with the agreement of the Principal Paying Agent, that the then market practice in respect of the redenomination in euro of internationally offered securities is different from the provisions specified above, such provisions shall be deemed to be amended so as to comply with such market practice and the Issuer shall promptly notify the Noteholders, the stock exchange (if any) on which the Notes may be listed and the Paying Agents of such deemed amendments;
- (b) save to the extent that an Exchange Notice has been given in accordance with paragraph (d) below, the amount of interest due in respect of the Notes will be calculated by reference to the aggregate nominal amount of Notes presented (or, as the case may be, in respect of which Coupons are presented) for payment by the relevant holder and the amount of such payment shall be rounded down to the nearest euro 0.01;
- (c) if definitive Notes are required to be issued after the Redenomination Date, they shall be issued at the expense of the Issuer (i) in the case of Relevant Notes in the denomination of euro 50,000 and/or such higher amounts as the Agent may determine and notify to the Noteholders and any remaining amounts less than euro 50,000 shall be redeemed by the Issuer and paid to the Noteholders in euro in accordance with Condition 5; and (ii) in the case of Notes which are not Relevant Notes, in the denominations of euro 1,000, euro 10,000, euro 100,000 and (but only to the extent of any remaining amounts less than euro 1,000 or such smaller denominations as the Principal Paying Agent may approve) euro 0.01 and such other denominations as the Principal Paying Agent shall determine and notify to the Noteholders;
- (d) if issued prior to the Redenomination Date, all unmatured Coupons denominated in the Specified Currency (whether or not attached to the Notes) will become void with effect from the date on which the Issuer gives notice (the "Exchange Notice") that replacement euro-denominated Notes, Receipts and Coupons are available for exchange (provided that such securities are so available) and no payments will be made in respect of them. The payment obligations contained in any Notes and Receipts so issued will also become void on that date although those Notes and Receipts will continue to constitute valid exchange obligations of the Issuer. New euro-denominated Notes, Receipts and Coupons will be issued in exchange for Notes, Receipts and Coupons denominated in the Specified Currency in such manner as the Principal Paying Agent may specify and as shall be notified to the Noteholders in the Exchange Notice. No Exchange Notice may be given less than 15 days prior to any date for payment of principal or interest on the Notes;
- (e) after the Redenomination Date, all payments in respect of the Notes, the Receipts and the Coupons, other than payments of interest in respect of periods commencing before the Redenomination Date, will be made solely in euro as though references in the Notes to the Specified Currency were to euro. Payments will be made in euro by credit or transfer to a euro account (or any other account to which euro may be credited or transferred) specified by the payee or, at the option of the payee, by a euro cheque;

- (f) if the Notes are Fixed Rate Notes and interest for any period ending on or after the Redenomination Date is required to be calculated for a period ending other than on an Interest Payment Date, it will be calculated:
  - (i) in the case of the Notes represented by a Global Note, by applying the Rate of Interest to the aggregate outstanding nominal amount of the Notes represented by such Global Note; and
  - (ii) in the case of definitive Notes, by applying the Rate of Interest to the Calculation Amount,
 and, in each case, multiplying such sum by the applicable Day Count Fraction, and rounding the resultant figure to the nearest sub-unit of the relevant Specified Currency, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention. Where the Specified Denomination of a Fixed Rate Note in definitive form is a multiple of the Calculation Amount, the amount of interest payable in respect of such Fixed Rate Note shall be the product of the amount (determined in the manner provided above) for the Calculation Amount and the amount by which the Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding;
- (g) if the Notes are Floating Rate Notes, the applicable Final Terms will specify any relevant changes to the provisions relating to interest; and
- (h) such other changes shall be made to this Condition as the Issuer may decide, after consultation with the Paying Agents, and as may be specified in the notice, to conform it to conventions applicable to instruments denominated in euro.

**(B) Definitions**

In the Terms and Conditions, the following expressions have the following meanings:

**"Established Rate"** means the rate for the conversion of the Specified Currency (including compliance with rules relating to roundings in accordance with applicable European Community regulations) into euro established by the Council of the European Union pursuant to Article 123 of the Treaty;

**"euro"** means the currency introduced at the start of the third stage of European economic and monetary union pursuant to the Treaty;

**"Redenomination Date"** means (in the case of interest bearing Notes) any date for payment of interest under the Notes or (in the case of Zero Coupon Notes) any date, in each case specified by the Issuer in the notice given to the Noteholders pursuant to Condition 3(A) above and which falls on or after the date on which the country of the Specified Currency first participates in the third stage of European economic and monetary union;

**"Relevant Notes"** means all Notes where the applicable Final Terms provide for a minimum Specified Denomination in the Specified Currency which is equivalent to at least euro 50,000 and which are admitted to trading on a regulated market in the European Economic Area; and

**"Treaty"** means the Treaty establishing the European Community, as amended.

**4. Interest**

**(A) Day Count Fraction**

**"Day Count Fraction"** means, in respect of the calculation of an amount of interest in accordance with this Condition 4:

- (a) if **"Actual/Actual (ICMA)"** is specified in the applicable Final Terms:
  - (i) in the case of Notes where the number of days in the relevant period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date) to (but excluding) the relevant payment date (the **"Accrual Period"**) is equal to or shorter than the Determination Period during which the

Accrual Period ends, the number of days in such Accrual Period divided by the product of (1) the number of days in such Determination Period and (2) the number of Determination Dates (as specified in the applicable Final Terms) that would occur in one calendar year; or

- (ii) in the case of Notes where the Accrual Period is longer than the Determination Period during which the Accrual Period ends, the sum of:
  - (A) the number of days in such Accrual Period falling in the Determination Period in which the Accrual Period begins divided by the product of (x) the number of days in such Determination Period and (y) the number of Determination Dates that would occur in one calendar year; and
  - (B) the number of days in such Accrual Period falling in the next Determination Period divided by the product of (x) the number of days in such Determination Period and (y) the number of Determination Dates that would occur in one calendar year;
- (b) if "**Actual/Actual (ISDA)**" or "**Actual/Actual**" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365 (or, if any portion of that Interest Period falls in a leap year, the sum of (1) the actual number of days in that portion of the Interest Period falling in a leap year divided by 366 and (2) the actual number of days in that portion of the Interest Period falling in a non-leap year divided by 365);
- (c) if "**Actual/365 (Fixed)**" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365;
- (d) if "**Actual/365 (Sterling)**" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 365 or, in the case of an Interest Payment Date falling in a leap year, 366;
- (e) if "**Actual/360**" is specified in the applicable Final Terms, the actual number of days in the Interest Period divided by 360;
- (f) if "**30/360 (ICMA)**" is specified in the applicable Final Terms, the number of days in the period from (and including) the most recent Interest Payment Date (or, if none, the Interest Commencement Date) to (but excluding) the relevant payment date (such number of days being calculated on the basis of a year of 360 days with 12 30-day months) divided by 360.
- (g) if "**30/360**", "**360/360**" or "**Bond Basis**" is specified in the applicable Final Terms, the number of days in the Interest Period divided by 360, calculated on a formula basis as follows:

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

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Interest Period, unless such number is 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31 and D<sub>1</sub> is greater than 29, in which case D<sub>2</sub> will be 30;

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

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

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Interest Period, unless such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless such number would be 31, in which case D<sub>2</sub> will be 30; or

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

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

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Interest Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Interest Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Interest Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Interest Period, unless (i) that day is the last day of February or (ii) such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Interest Period, unless (i) that day is the last day of February but not the Maturity Date or (ii) such number would be 31, in which case D<sub>2</sub> will be 30.

In these Terms and Conditions:

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

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

(B) *Interest on Fixed Rate Notes*

Each Fixed Rate Note bears interest from (and including) the Interest Commencement Date at the rate(s) per annum equal to the Rate(s) of Interest. Interest will be payable in arrear on the Interest Payment Date(s) in each year up to (and including) the Maturity Date.

If the Notes are in definitive form except as provided in the applicable Final Terms, the amount of interest payable on each Interest Payment Date in respect of the Fixed Interest Period ending on (but excluding) such date will amount to the Fixed Coupon Amount. Payments of interest on any Interest Payment Date will, if so specified in the applicable Final Terms, amount to the Broken Amount so specified.

As used in these Terms and Conditions, "**Fixed Interest Period**" means the period from (and including) an Interest Payment Date (or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date.

Except in the case of Notes in definitive form where an applicable Fixed Coupon Amount or Broken Amount is specified in the applicable Final Terms, interest shall be calculated in respect of any period by applying the Rate of Interest to:

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

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

(C) *Interest on Floating Rate Notes, Index Linked Interest Notes, Share Linked Interest Notes, Debt Linked Interest Notes, GDR/ADR Linked Interest Notes, FX Linked Interest Notes, Commodity Linked Interest Notes, Fund Linked Interest Notes and Inflation Linked Interest Notes*

(a) *Interest Payment Dates*

Each Floating Rate Note, Index Linked Interest Note, Share Linked Interest Note, Debt Linked Interest Note, GDR/ADR Linked Interest Note, FX Linked Interest Note, Commodity Linked Interest Note, Fund Linked Interest Note and Inflation Linked Interest Note bears interest on its outstanding nominal amount (or, if it is a Partly Paid Note, the amount paid up) from (and including) the Interest Commencement Date and such interest will be payable in arrear on either:

- (i) the Specified Interest Payment Date(s) in each year specified in the applicable Final Terms; or
- (ii) if no Specified Interest Payment Date(s) is/are specified in the applicable Final Terms, each date (each such date, together with each Specified Interest Payment Date, an "**Interest Payment Date**") which falls the number of months or other period specified as the Specified Period in the applicable Final Terms after the preceding Interest Payment Date or, in the case of the first Interest Payment Date, after the Interest Commencement Date.

Such interest will be payable in respect of each Interest Period (which expression shall, in these Terms and Conditions, mean the period from (and including) an Interest Payment Date

(or the Interest Commencement Date) to (but excluding) the next (or first) Interest Payment Date).

If a Business Day Convention is specified in the applicable Final Terms and (x) if there is no numerically corresponding day in the calendar month in which an Interest Payment Date should occur or (y) if any Interest Payment Date would otherwise fall on a day which is not a Business Day, then, if the Business Day Convention specified is:

- (1) in any case where Specified Periods are specified in accordance with Condition 4(B)(a)(ii) above, the Floating Rate Convention, such Interest Payment Date (i) in the case of (x) above, shall be the last day that is a Business Day in the relevant month and the provisions of (B) below shall apply mutatis mutandis or (ii) in the case of (y) above, shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event (A) such Interest Payment Date shall be brought forward to the immediately preceding Business Day and (B) each subsequent Interest Payment Date shall be the last Business Day in the month which falls the Specified Period after the preceding applicable Interest Payment Date occurred; or
- (2) the Following Business Day Convention, such Interest Payment Date shall be postponed to the next day which is a Business Day; or
- (3) the Modified Following Business Day Convention, such Interest Payment Date shall be postponed to the next day which is a Business Day unless it would thereby fall into the next calendar month, in which event such Interest Payment Date shall be brought forward to the immediately preceding Business Day; or
- (4) the Preceding Business Day Convention, such Interest Payment Date shall be brought forward to the immediately preceding Business Day.

In these Terms and Conditions, "**Business Day**" means a day which is both:

- (A) a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in London and each Additional Business Centre specified in the applicable Final Terms; and
- (B) either (1) in relation to any sum payable in a Specified Currency other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the principal financial centre of the country of the relevant Specified Currency (if other than London and any Additional Business Centre and which if the Specified Currency is Australian dollars or New Zealand dollars shall be Sydney or Auckland, respectively) or (2) in relation to any sum payable in euro, a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System (the "**TARGET2 System**") is open.

(b) *Rate of Interest*

The Rate of Interest payable from time to time in respect of Floating Rate Notes, Index Linked Interest Notes, Share Linked Interest Notes, Debt Linked Interest Notes, GDR/ADR Linked Interest Notes, FX Linked Interest Notes, Commodity Linked Interest Notes, Fund Linked Interest Notes and Inflation Linked Interest Notes will be determined in the manner specified in the applicable Final Terms.

(i) *ISDA Determination for Floating Rate Notes*

Where ISDA Determination is specified in the applicable Final Terms as the manner in which the Rate of Interest is to be determined, the Rate of Interest for each Interest Period will be the relevant ISDA Rate plus or minus (as indicated in the applicable Final Terms) the Margin (if any). For the purposes of this sub-paragraph (i), "ISDA Rate" for an Interest Period means a rate equal to the

Floating Rate that would be determined by the Principal Paying Agent under an interest rate swap transaction if the Principal Paying Agent were acting as Calculation Agent for that swap transaction under the terms of an agreement incorporating the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc. and as amended and updated as at the Issue Date of the first Tranche of the Notes (the "**ISDA Definitions**") and under which:

- (A) the Floating Rate Option is as specified in the applicable Final Terms;
- (B) the Designated Maturity is a period specified in the applicable Final Terms; and
- (C) the relevant Reset Date is either (i) if the applicable Floating Rate Option is based on the London interbank offered rate ("**LIBOR**") or on the Euro-zone interbank offered rate ("**EURIBOR**"), the first day of that Interest Period or (ii) in any other case, as specified in the applicable Final Terms.

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

Unless otherwise stated in the applicable Final Terms, the Minimum Rate of Interest shall be deemed to be zero.

(ii) *Screen Rate Determination for Floating Rate Notes*

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

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

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

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

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

(c) *Minimum Rate of Interest and/or Maximum Rate of Interest*

If the applicable Final Terms specifies a Minimum Rate of Interest for any Interest Period, then, in the event that the Rate of Interest in respect of such Interest Period determined in

accordance with the provisions of paragraph (b) above is less than such Minimum Rate of Interest, the Rate of Interest for such Interest Period shall be such Minimum Rate of Interest.

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

(d) *Determination of Rate of Interest and Calculation of Interest Amounts*

The Principal Paying Agent, in the case of Floating Rate Notes, and the Calculation Agent, in the case of Index Linked Interest Notes, Share Linked Interest Notes, Debt Linked Interest Notes, GDR/ADR Linked Interest Notes, FX Linked Interest Notes, Commodity Linked Interest Notes, Fund Linked Interest Notes and Inflation Linked Interest Notes, will, at or as soon as practicable after each time at which the Rate of Interest is to be determined, determine the Rate of Interest for the relevant Interest Period. In the case of Index Linked Interest Notes, Share Linked Interest Notes, Debt Linked Interest Notes, GDR/ADR Linked Interest Notes, FX Linked Interest Notes, Commodity Linked Interest Notes, Fund Linked Interest Notes and Inflation Linked Interest Notes, the Calculation Agent will notify the Principal Paying Agent of the Rate of Interest for the relevant Interest Period as soon as practicable after calculating the same.

The Principal Paying Agent, in the case of Floating Rate Notes, and the Calculation Agent, in the case of Index Linked Interest Notes, Share Linked Interest Notes, Debt Linked Interest Notes, GDR/ADR Linked Interest Notes, FX Linked Interest Notes, Commodity Linked Interest Notes, Fund Linked Interest Notes and Inflation Linked Interest Notes, will calculate the amount of interest (the "**Interest Amount**") payable on the Notes for the relevant Interest Period by applying the Rate of Interest to:

- (i) in the case of Floating Rate Notes, Index Linked Interest Notes, Share Linked Interest Notes, Debt Linked Interest Notes, GDR/ADR Linked Interest Notes, FX Linked Interest Notes, Commodity Linked Interest Notes, Fund Linked Interest Notes or Inflation Linked Interest Notes which are represented by a Global Note, the aggregate outstanding nominal amount of the Notes represented by such Global Note (or, if they are Partly Paid Notes, the aggregate amount paid up); or
- (ii) in the case of Floating Rate Notes, Index Linked Interest Notes, Share Linked Interest Notes, Debt Linked Interest Notes, GDR/ADR Linked Interest Notes, FX Linked Interest Notes, Commodity Linked Interest Notes, Fund Linked Interest Notes or Inflation Linked Interest Notes in definitive form, the Calculation Amount,

and, in each case, multiplying such sum by the applicable Day Count Fraction, and rounding the resultant figure to the nearest sub-unit of the relevant Specified Currency, half of any such sub-unit being rounded upwards or otherwise in accordance with applicable market convention. Where the Specified Denomination of a Floating Rate Note, Index Linked Interest Note, Share Linked Interest Note, Debt Linked Interest Note, GDR/ADR Linked Interest Note, FX Linked Interest Note, Commodity Linked Interest Note, Fund Linked Interest Note or Inflation Linked Interest Note in definitive form is a multiple of the Calculation Amount, the Interest Amount payable in respect of such Note shall be the product of the amount (determined in the manner provided above) for the Calculation Amount and the amount by which the Calculation Amount is multiplied to reach the Specified Denomination, without any further rounding. In such case, the Calculation Agent will notify the Principal Paying Agent of the Interest Amount for the relevant Interest Period as soon as practicable after calculating the same.

(e) *Notification of Rate of Interest and Interest Amounts*

The Principal Paying Agent will cause the Rate of Interest and each Interest Amount for each Interest Period and the relevant Interest Payment Date to be notified to the Issuer and any



stock exchange on which the relevant Floating Rate Notes, Index Linked Interest Notes, Share Linked Interest Notes, Debt Linked Interest Notes, GDR/ADR Linked Interest Notes, FX Linked Interest Notes, Commodity Linked Interest Notes, Fund Linked Interest Notes or Inflation Linked Interest Notes are for the time being listed (by no later than the first day of each Interest Period) and notice thereof to be published in accordance with Condition 13 as soon as possible after their determination but in no event later than the fourth London Business Day thereafter. Each Interest Amount and Interest Payment Date so notified may subsequently be amended (or appropriate alternative arrangements made by way of adjustment) without prior notice in the event of an extension or shortening of the Interest Period. Any such amendment will be promptly notified to each stock exchange on which the relevant Floating Rate Notes, Index Linked Interest Notes, Share Linked Interest Notes, Debt Linked Interest Notes, GDR/ADR Linked Interest Notes, FX Linked Interest Notes, Commodity Linked Interest Notes, Fund Linked Interest Notes or Inflation Linked Interest Notes are for the time being listed and to the Noteholders in accordance with Condition 13. For the purposes of this paragraph (e), the expression "**London Business Day**" means a day (other than a Saturday or a Sunday) on which banks and foreign exchange markets are open for general business in London.

(f) *Certificates to be final*

All certificates, communications, opinions, determinations, calculations, quotations and decisions given, expressed, made or obtained for the purposes of the provisions of this Condition 4(C), whether by the Principal Paying Agent or, if applicable, the Calculation Agent, shall (in the absence of wilful default, bad faith, manifest error or proven error) be binding on the Issuer, the Guarantor, the Principal Paying Agent, the Calculation Agent (if applicable), the other Paying Agents and all Noteholders, Receiptholders and Couponholders and (in the absence of wilful default or bad faith) no liability to the Issuer, the Guarantor, the Noteholders, the Receiptholders or the Couponholders shall attach to the Principal Paying Agent or the Calculation Agent (if applicable) in connection with the exercise or non exercise by it of its powers, duties and discretions pursuant to such provisions.

(D) *Interest on Partly Paid Notes*

In the case of Partly Paid Notes (other than Partly Paid Notes which are Zero Coupon Notes), interest will accrue as aforesaid on the paid-up nominal amount of such Notes and otherwise as specified in the applicable Final Terms.

(E) *Accrual of interest*

Each Note (or in the case of the redemption of part only of a Note, that part only of such Note) will cease to bear interest (if any) from the date for its redemption unless, upon due presentation thereof, payment of principal is improperly withheld or refused. In such event, interest will continue to accrue until whichever is the earlier of:

- (a) the date on which all amounts due in respect of such Note have been paid and/or all assets deliverable in respect of such Note have been delivered; and
- (b) five days after the date on which the full amount of the moneys payable in respect of such Note has been received by the Principal Paying Agent and/or all assets in respect of such Note have been received by any agent appointed by the Issuer to deliver such assets to Noteholders and notice to that effect has been given to the Noteholders in accordance with Condition 13,

Provided That if Annex 9 - *Additional Terms and Conditions for Credit Linked Notes and Certificates* apply in respect of the Notes; and

- (i) "Accrual of Interest upon Credit Event" is specified as Not Applicable in the applicable Final Terms, each Note shall cease to bear interest from the Interest Payment Date immediately preceding the Credit Event Determination Date, or if the Credit Event Determination Date is an Interest Payment Date such Interest Payment Date or, if the Credit

Event Determination Date falls prior to the first Interest Payment Date, no interest shall accrue on the Notes; or

- (ii) "Accrual of Interest upon Credit Event" is specified as being Applicable in the applicable Final Terms, each Note shall cease to bear interest from the Credit Event Determination Date; and

Provided Further That, if

- (A) Credit Linked Condition 6 or Credit Linked Condition 7 applies in respect of the Notes and, in the case of Credit Linked Condition 6, a Repudiation/Moratorium has not occurred on or prior to the Repudiation/Moratorium Evaluation Date or, in the case of Credit Linked Condition 7, a Failure to Pay has not occurred on or prior to the Grace Period Extension Date, as the case may be; and/or
- (B) Credit Linked Condition 8 applies in respect of the Notes and the Scheduled Maturity Date, the Grace Period Extension Date or the Repudiation/Moratorium Evaluation Date, as the case may be, is postponed as provided therein,

then interest will accrue as provided in Credit Linked Condition 6, Credit Linked Condition 7 or Credit Linked Condition 8, as the case may be.

## **5. Payments**

### **(A) Method of payment**

Subject as provided below:

- (a) payments in a Specified Currency other than euro or U.S. dollars will be made by credit or transfer to an account in the relevant Specified Currency maintained by the payee with, or, at the option of the payee, by a cheque in such Specified Currency drawn on, a bank in the principal financial centre of the country of such Specified Currency (which, if the Specified Currency is Australian dollars or New Zealand dollars, shall be Sydney and Auckland, respectively);
- (b) payments in euro will be made by credit or transfer to a euro account (or any other account to which euro may be credited or transferred) specified by the payee or, at the option of the payee, by a euro cheque; and
- (c) payments in U.S. dollars will be made by transfer to a U.S. dollar account maintained by the payee with a bank outside of the United States (which expression, as used in this Condition 5, means the United States of America, including the States and the District of Columbia, its territories, its possessions and other areas subject to its jurisdiction), or by cheque drawn on a United States bank.

In no event will payment be made by a cheque mailed to an address in the United States.

Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment, but without prejudice to the provisions of Condition 7.

### **(B) Presentation of definitive Notes, Receipts and Coupons**

Payments of principal in respect of definitive Notes will (subject as provided below) be made in the manner provided in paragraph (A) above only against presentation and surrender (or, in the case of part payment of any sum due, endorsement) of definitive Notes, and payments of interest in respect of definitive Notes will (subject as provided below) be made as aforesaid only against presentation and surrender (or, in the case of part payment of any sum due, endorsement) of Coupons, in each case at the specified office of any Paying Agent outside the United States).

Payments of instalments of principal (if any) in respect of definitive Notes, other than the final instalment, will (subject as provided below) be made in the manner provided in paragraph (A) above only against presentation and surrender (or, in the case of part payment of any sum due, endorsement) of the relevant Receipt in accordance with the preceding paragraph. Payment of the final instalment will be made in the manner provided in paragraph (A) above only against

presentation and surrender (or, in the case of part payment of any sum due, endorsement) of the relevant Note in accordance with the preceding paragraph. Each Receipt must be presented for payment of the relevant instalment together with the definitive Note to which it appertains. Receipts presented without the definitive Note to which they appertain do not constitute valid obligations of the Issuer. Upon the date on which any definitive Note becomes due and repayable, unmatured Receipts (if any) relating thereto (whether or not attached) shall become void and no payment shall be made in respect thereof.

Fixed Rate Notes in definitive form (other than Index Linked Redemption Notes, Share Linked Redemption Notes, Debt Linked Redemption Notes, GDR/ADR Linked Redemption Notes, Commodity Linked Redemption Notes, Fund Linked Redemption Notes, Inflation Linked Redemption Notes, Credit Linked Notes or Long Maturity Notes (as defined below)) should be presented for payment together with all unmatured Coupons appertaining thereto (which expression shall for this purpose include Coupons falling to be issued on exchange of matured Talons), failing which the amount of any missing unmatured Coupon (or, in the case of payment not being made in full, the same proportion of the amount of such missing unmatured Coupon as the sum so paid bears to the sum due) will be deducted from the sum due for payment. Each amount of principal so deducted will be paid in the manner mentioned above against surrender of the relative missing Coupon at any time before the expiry of ten years after the Relevant Date (as defined in Condition 8) in respect of such principal (whether or not such Coupon would otherwise have become void under Condition 8) or, if later, five years from the date on which such Coupon would otherwise have become due, but in no event thereafter.

Upon any Fixed Rate Note in definitive form becoming due and repayable prior to its Maturity Date, all unmatured Talons (if any) appertaining thereto will become void and no further Coupons will be issued in respect thereof.

Upon the date on which any Floating Rate Note, Index Linked Note, Share Linked Note, Debt Linked Note, GDR/ADR Linked Note, Commodity Linked Note, Fund Linked Note, Inflation Linked Note, Credit Linked Note or Long Maturity Note in definitive form becomes due and repayable, unmatured Coupons and Talons (if any) relating thereto (whether or not attached) shall become void and no payment or, as the case may be, exchange for further Coupons shall be made in respect thereof. A "Long Maturity Note" is a Fixed Rate Note (other than a Fixed Rate Note which on issue had a Talon attached) whose nominal amount on issue is less than the aggregate interest payable thereon provided that such Note shall cease to be a Long Maturity Note on the Interest Payment Date on which the aggregate amount of interest remaining to be paid after that date is less than the nominal amount of such Note.

If the due date for redemption of any definitive Note is not an Interest Payment Date, interest (if any) accrued in respect of such Note from (and including) the preceding Interest Payment Date or, as the case may be, the Interest Commencement Date shall be payable only against surrender of the relevant definitive Note.

**(C) *Payments in respect of Global Notes***

Payments of principal and interest (if any) in respect of Notes represented by any Global Note will (subject as provided below) be made in the manner specified above in relation to definitive Notes and otherwise in the manner specified in the relevant Global Note against presentation or surrender, as the case may be, of such Global Note at the specified office of any Paying Agent outside the United States. A record of each payment made against presentation or surrender of any Global Note, distinguishing between any payment of principal and any payment of interest, will be made on such Global Note by the Paying Agent to which it was presented and such record shall be *prima facie* evidence that the payment in question has been made.

**(D) *General provisions applicable to payments***

The holder of a Global Note shall be the only person entitled to receive payments or make a claim with respect to payments in respect of Notes represented by such Global Note and the Issuer or, as the case may be, the Guarantor will be discharged by payment to, or to the order of, the holder of

such Global Note in respect of each amount so paid. Each of the persons shown in the records of Euroclear or Clearstream, Luxembourg as the beneficial holder of a particular nominal amount of Notes represented by such Global Note must look solely to Euroclear or Clearstream, Luxembourg, as the case may be, for his share of each payment so made by the Issuer or, as the case may be, the Guarantor to, or to the order of, the holder of such Global Note.

Notwithstanding the foregoing provisions of this Condition 5, if any amount of principal and/or interest in respect of Notes is payable in U.S. dollars, such U.S. dollar payments of principal and/or interest in respect of such Notes will be made at the specified office of a Paying Agent in the United States if:

- (a) the Issuer has appointed Paying Agents with specified offices outside the United States with the reasonable expectation that such Paying Agents would be able to make payment in U.S. dollars at such specified offices outside the United States of the full amount of principal and interest on the Notes in the manner provided above when due;
- (b) payment of the full amount of such principal and interest at all such specified offices outside the United States is illegal or effectively precluded by exchange controls or other similar restrictions on the full payment or receipt of principal and interest in U.S. dollars; and
- (c) such payment is then permitted under United States law without involving, in the opinion of the Issuer and the Guarantor, adverse tax consequences to the Issuer or the Guarantor.

*(E) Payment Day*

If the date for payment of any amount in respect of any Note, Receipt or Coupon is not a Payment Day, the holder thereof shall not be entitled to payment until (i) if "Following" is specified in the applicable Final Terms, the next following Payment Day or (ii), if "Modified Following" is specified in the applicable Final Terms, the next following Payment Day unless that Payment Day falls in the next calendar month, in which case the first preceding Payment Day, in the relevant place and shall not be entitled to further interest or other payment in respect of such delay or amendment. For these purposes, "**Payment Day**" means any day which (subject to Condition 8) is:

- (a) a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in:
  - (i) the relevant place of presentation;
  - (ii) London; and
  - (iii) each Additional Financial Centre specified in the applicable Final Terms; and
- (b) either (1) in relation to any sum payable in a Specified Currency other than euro, a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in the principal financial centre of the country of the relevant Specified Currency (if other than the place of presentation, London and any Additional Financial Centre and which if the Specified Currency is Australian dollars or New Zealand dollars shall be Sydney or Auckland, respectively) or (2) in relation to any sum payable in euro, a day on which the TARGET2 System is open.

*(F) Interpretation of principal and interest*

Any reference in these Terms and Conditions to principal in respect of the Notes shall be deemed to include, as applicable:

- (a) any additional amounts which may be payable with respect to principal under Condition 7;
- (b) the Final Redemption Amount of the Notes;
- (c) the Early Redemption Amount of the Notes;
- (d) the Optional Redemption Amount(s) (if any) of the Notes;
- (e) the Failure to Deliver Settlement Price (if any) in respect of the Notes;

- (f) the Disruption Cash Settlement Price (if any) in respect of the Notes;
- (g) the Credit Event Redemption Amount (if any) in respect of the Notes;
- (h) the Partial Cash Settlement Amount (if any) in respect of the Notes;
- (i) in relation to Notes redeemable in instalments, the Instalment Amounts;
- (j) in relation to Zero Coupon Notes, the Amortised Face Amount (as defined in Condition 6(E)(c)); and
- (k) any premium and any other amounts (other than interest) which may be payable by the Issuer under or in respect of the Notes.

Any reference in these Terms and Conditions to interest in respect of the Notes shall be deemed to include, as applicable, any additional amounts which may be payable with respect to interest under Condition 7.

**(G) Definition of Affiliate**

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

**6. Redemption and Purchase**

**(A) Redemption at maturity**

Unless previously redeemed or purchased and cancelled as specified below, each Note (unless it is a Credit Linked Note) will be redeemed by the Issuer at its Final Redemption Amount specified in, or determined in the manner specified in, the applicable Final Terms in the relevant Specified Currency on the Maturity Date or if the Notes are specified as Physical Delivery Notes in the applicable Final Terms, by delivery of the Entitlement (subject as provided in Annex 10 – *Additional Terms and Conditions for Physical Delivery Notes* specified in or determined in the manner specified in the applicable Final Terms on the Maturity Date.

**(B) Redemption for Tax Reasons**

The Issuer may redeem the Notes, in whole, but not in part, at any time (if this Note is not a Floating Rate Note, an Index Linked Interest Note, a Share Linked Interest Note, a Debt Linked Interest Note, a GDR/ADR Linked Interest Note, a FX Linked Interest Note, a Commodity Linked Interest Note, a Fund Linked Interest Note or an Inflation Linked Interest Note) or on any Interest Payment Date (if this Note is a Floating Rate Note, an Index Linked Interest Note, a Share Linked Interest Note, a Debt Linked Interest Note, a GDR/ADR Linked Interest Note, a FX Linked Interest Note, a Commodity Linked Interest Note, a Fund Linked Interest Note or an Inflation Linked Interest Note) at their Early Redemption Amount, together, if appropriate, with accrued interest to (but excluding) the date fixed for redemption, if the Issuer or the Guarantor shall determine, based upon a written opinion of independent counsel selected by the Issuer or the Guarantor, as the case may be, that as a result of any change in or amendment to the laws (or any regulations or rulings promulgated thereunder) of the United States of America or Luxembourg, as the case may be, or any political subdivision or taxing authority of or in the United States of America or Luxembourg, as applicable, affecting taxation, or any change in application or official interpretation of such laws, regulations or rulings, which amendment or change is effective on or after the latest Issue Date of the Notes, (i) the Issuer would be required to pay additional amounts, as provided in Condition 7, on the occasion of the next payment due with respect to the Notes; or (ii) on the occasion of the next payment due in respect of the Notes, the Guarantor would be unable to procure the Issuer to make payment and, in making such payment itself under the Guarantee, the Guarantor would, as a result of any change in or amendment to the laws (or any regulations or rulings promulgated thereunder) of the United States of America or any political subdivision or taxing authority thereof or therein affecting taxation, or any change in application or official interpretation of such laws, regulations or rulings,

which amendment or change is effective on or after the latest Issue Date of the Notes, be required to pay additional amounts as provided in Condition 7.

The Notes are also subject to redemption in whole, but not in part in the other circumstances described in Condition 7.

Notice of intention to redeem Notes will be given at least once in accordance with Condition 13 not less than 30 days nor more than 60 days prior to the date fixed for redemption, provided that no such notice of redemption shall be given earlier than 90 days prior to the effective date of such change or amendment and that at the time notice of such redemption is given, such obligation to pay such additional amounts remains in effect and cannot be avoided by the Issuer's taking reasonable measures available to it. From and after any redemption date, if monies for the redemption of Notes shall have been made available for redemption on such redemption date, such Notes shall cease to bear interest, if applicable, and the only right of the holders of such Notes and any Receipts or Coupons appertaining thereto shall be to receive payment of the Early Redemption Amount and, if appropriate, all unpaid interest accrued to such redemption date.

*(C) Redemption at the option of the Issuer (Issuer Call)*

If Issuer Call is specified in the applicable Final Terms, the Issuer may, having given:

- (a) not less than 30 nor more than 60 days' notice to the Noteholders in accordance with Condition 13; and
- (b) not less than 15 days before the giving of the notice referred to in (a), notice to the Principal Paying Agent,

(which notices shall be irrevocable and shall specify the date fixed for redemption), redeem all or some only of the Notes then outstanding on any Optional Redemption Date and at the Optional Redemption Amount(s) specified in, or determined in the manner specified in, the applicable Final Terms together, if appropriate, with interest accrued to (but excluding) the relevant Optional Redemption Date. Any such redemption must be of a nominal amount not less than the Minimum Redemption Amount and/or not more than the Maximum Redemption Amount in each case as may be specified in the applicable Final Terms. In the case of a partial redemption of Notes, the Notes to be redeemed ("**Redeemed Notes**") will be selected individually by lot, in the case of Redeemed Notes represented by definitive Notes, and in accordance with the rules of Euroclear and/or Clearstream, Luxembourg, (to be reflected in the records of Euroclear and Clearstream, Luxembourg as either a pool factor or a reduction in nominal amount at their discretion) in the case of Redeemed Notes represented by a Global Note, not more than 60 days prior to the date fixed for redemption (such date of selection being hereinafter called the "**Selection Date**"). In the case of Redeemed Notes represented by definitive Notes, a list of the serial numbers of such Redeemed Notes will be published in accordance with Condition 13 not less than 30 days prior to the date fixed for redemption. No exchange of the relevant Global Note will be permitted during the period from (and including) the Selection Date to (and including) the date fixed for redemption pursuant to this paragraph (C) and notice to that effect shall be given by the Issuer to the Noteholders in accordance with Condition 13 at least five days prior to the Selection Date.

*(D) Redemption at the option of the Noteholders (Investor Put)*

If Investor Put is specified in the applicable Final Terms, upon the holder of any Note giving to the Issuer in accordance with Condition 13 not less than 30 nor more than 60 days' notice the Issuer will, upon the expiry of such notice, redeem, subject to, and in accordance with, the terms specified in the applicable Final Terms, such Note on the Optional Redemption Date and at the Optional Redemption Amount together, if appropriate, with interest accrued to (but excluding) the Optional Redemption Date. It may be that before an Investor Put can be exercised, certain conditions and/or circumstances will need to be satisfied. Where relevant, the provisions will be set out in the applicable Final Terms.

If this Note is in definitive form and held outside Euroclear and Clearstream, Luxembourg, to exercise the right to require redemption of this Note the holder of this Note must deliver, at the specified office of any Paying Agent at any time during normal business hours of such Paying Agent

falling within the notice period, accompanied by a duly completed and signed notice of exercise in the form (for the time being current) obtainable from any specified office of any Paying Agent (a "Put Notice") and in which the holder must specify a bank account (or, if payment is required to be made by cheque, an address) to which payment is to be made under this Condition 6 accompanied by this Note or evidence satisfactory to the Paying Agent concerned that this Note will, following delivery of the Put Notice, be held to its order or under its control. If this Note is represented by a Global Note or is in definitive form and held through Euroclear or Clearstream, Luxembourg, to exercise the right to require redemption of this Note the holder of this Note must, within the notice period, give notice to the Principal Paying Agent of such exercise in accordance with the standard procedures of Euroclear and Clearstream, Luxembourg (which may include notice being given on his instruction by Euroclear or Clearstream, Luxembourg or any common depositary or common safekeeper, as the case may be, for them to the Principal Paying Agent by electronic means) in a form acceptable to Euroclear and Clearstream, Luxembourg from time to time and, if this Note is represented by a Global Note, at the same time present or procure the presentation of the relevant Global Note to the Principal Paying Agent for notation accordingly.

Any Put Notice or other notice given in accordance with the standard procedures of Euroclear and Clearstream, Luxembourg given by a holder of any Note pursuant to this paragraph (D) shall be irrevocable except where, prior to the due date of redemption, an Event of Default has occurred and is continuing in which event such holder, at its option, may elect by notice to the Issuer to withdraw the notice given pursuant to this paragraph (D) and instead to declare such Note forthwith due and payable pursuant to Condition 9.

**(E) Early Redemption Amounts**

The Early Redemption Amount shall be calculated as follows:

- (a) in the case of a Note with a Final Redemption Amount equal to the Issue Price, at the Final Redemption Amount thereof;
- (b) in the case of a Note (other than a Zero Coupon Note and excluding Notes specified in paragraph (d) below but including an Instalment Note and a Partly Paid Note) with a Final Redemption Amount which is or may be less or greater than the Issue Price or which is payable in a Specified Currency other than that in which the Note is denominated, at the amount specified in, or determined in the manner specified in, the applicable Final Terms or, if no such amount or manner is so specified in the applicable Final Terms, at its nominal amount; or
- (c) in the case of a Zero Coupon Note, at an amount (the "Amortised Face Amount") calculated in accordance with the following formula:

$$\text{Early Redemption Amount} = \text{RP} \times (1 + \text{AY})^y$$

where:

"RP" means the Reference Price; and

"AY" means the Accrual Yield expressed as a decimal; and

"y" is a fraction the numerator of which is equal to the number of days (calculated on the basis of a 360-day year consisting of 12 months of 30 days each) from (and including) the Issue Date of the first Tranche of the Notes to (but excluding) the date fixed for redemption or (as the case may be) the date upon which such Note becomes due and repayable and the denominator of which is 360,

or on such other calculation basis as may be specified in the applicable Final Terms; or

- (d) in the case of Index Linked Notes, Share Linked Notes, Debt Linked Notes, GDR/ADR Linked Notes, FX Linked Notes, Commodity Linked Notes, Fund Linked Notes, Inflation Linked Notes or Credit Linked Notes, the Early Redemption Amount in respect of each nominal amount of such Notes equal to the Calculation Amount will be set out in the applicable Final Terms

If "**Market Value less Associated Costs**" is specified as the Early Redemption Amount in the applicable Final Terms the Early Redemption Amount in respect of each nominal amount of Notes equal to the Calculation Amount shall be an amount determined by the Calculation Agent, which on (i) in the case of redemption other than pursuant to Condition 9, the second Business Day immediately preceding the due date for the early redemption of the Notes or (ii) in the case of redemption pursuant to Condition 9, the due date for the early redemption of such Notes, represents the fair market value of such Notes (taking into account all factors which the Calculation Agent determines relevant) less Associated Costs, and provided that no account shall be taken of the financial condition of the Issuer which shall be presumed to be able to perform fully its obligations in respect of the Notes.

As used herein:

"**Associated Costs**" means an amount per nominal amount of the Notes equal to the Calculation Amount equal to such Notes' pro rata share of the total amount of any and all costs associated or incurred by the Issuer or any Affiliate in connection with such early redemption, including, without limitation, any costs associated with unwinding any funding relating to the Notes and any costs associated with unwinding any hedge positions relating to the Notes, all as determined by the Calculation Agent in its sole discretion.

*(F) Automatic Early Redemption Event*

If Automatic Early Redemption is specified as applicable in the applicable Final Terms, then unless previously redeemed or purchased and cancelled, if an Automatic Early Redemption Event as specified in the applicable Final Terms occurs, then the Issuer will give notice to Noteholders in accordance with Condition 13 and the Notes will be redeemed in whole, but not in part, on the Automatic Early Redemption Date as specified in the applicable Final Terms at the Automatic Early Redemption Amount as specified in the applicable Final Terms.

*(G) Instalments*

Instalment Notes will be redeemed in the Instalment Amounts and on the Instalment Dates. In the case of early redemption, the Early Redemption Amount will be determined pursuant to paragraph (E) above.

*(H) Partly Paid Notes*

Partly Paid Notes will be redeemed, whether at maturity, early redemption or otherwise, in accordance with the provisions of this Condition 6 and the applicable Final Terms.

*(I) Illegality*

In the event that the Issuer determines in good faith that (i) the performance of the Issuer's obligations under the Notes or that any arrangements made to hedge the Issuer's obligations under the Notes or (ii) the performance by the Guarantor of any of its obligations under the Guarantee in respect of the Notes, has or will become unlawful, illegal or otherwise prohibited in whole or in part as a result of compliance with any applicable present or future law, rule, regulation, judgment, order or directive of any governmental, administrative, legislative or judicial authority or power, or in the interpretation thereof, the Issuer having given not less than 10 nor more than 30 days' notice to Noteholders in accordance with Condition 13 (which notice shall be irrevocable), may, on expiry of such notice redeem all, but not some only, of the Notes, each Note being redeemed at the Early Redemption Amount together (if appropriate) with interest accrued to (but excluding) the date of redemption.

*(J) Purchases*

The Issuer, the Guarantor or any of their affiliates may at any time purchase Notes (provided that, in the case of definitive Notes, all unmatured Receipts, Coupons and Talons appertaining thereto are purchased therewith) at any price in the open market or otherwise. Such Notes may be held, reissued, resold or, at the option of the Issuer or the Guarantor, surrendered to any Paying Agent for cancellation.



**(K) Cancellation**

All Notes which are redeemed will forthwith be cancelled (together with all unmatured Receipts, Coupons and Talons attached thereto or surrendered therewith at the time of redemption). All Notes so cancelled and any Notes purchased and cancelled pursuant to paragraph (J) above (together with all unmatured Receipts, Coupons and Talons cancelled therewith) shall be forwarded to the Principal Paying Agent and cannot be reissued or resold.

**(L) Late payment on Zero Coupon Notes**

If the amount payable in respect of any Zero Coupon Note upon redemption of such Zero Coupon Note pursuant to paragraphs (A), (B), (C) or (D) above or upon its becoming due and repayable as provided in Condition 9 is improperly withheld or refused, the amount due and repayable in respect of such Zero Coupon Note shall be the amount calculated as provided in paragraph (E)(c) above as though the references therein to the date fixed for the redemption or the date upon which such Zero Coupon Note becomes due and payable were replaced by references to the date which is the earlier of:

- (a) the date on which all amounts due in respect of such Zero Coupon Note have been paid; and
- (b) five days after the date on which the full amount of the moneys payable in respect of such Zero Coupon Notes has been received by the Principal Paying Agent and notice to that effect has been given to the Noteholders in accordance with Condition 13.

**7. Taxation**

**(A)** The Issuer or the Guarantor, as the case may be, will, subject to certain limitations and exceptions (set forth below), pay to a Noteholder, Receiptholder or Couponholder who is a United States Alien or a Luxembourg Non-resident (each as defined below) such additional amounts as may be necessary so that every net payment of principal or interest or other amount with respect to the Notes, Receipts, Coupons or the Guarantee after deduction or withholding for or on account of any present or future tax, assessment or other governmental charge imposed upon such Noteholder, Receiptholder or Couponholder or by reason of the making of such payment, by the United States or Luxembourg or any political subdivision or taxing authority of or in the United States or Luxembourg, as the case may be, and will not be less than the amount provided for in the Notes, Receipts, Coupons or the Guarantee to be then due and payable, as the case may be. Neither the Issuer nor the Guarantor shall be required to make any payment of additional amounts for or on account of:

- (a) any tax, assessment or other governmental charge which would not have been imposed but for (i) the existence of any present or former connection between such Noteholder, Receiptholder or Couponholder (or between a fiduciary, settlor, beneficiary, member or shareholder of, or possessor of a power over, such Noteholder, Receiptholder or Couponholder, if such Noteholder, Receiptholder or Couponholder is an estate, trust, partnership or corporation) and the United States or Luxembourg, as the case may be, including, without limitation, such Noteholder, Receiptholder or Couponholder (or such fiduciary, settlor, beneficiary, member, shareholder or possessor) being or having been a citizen or resident of the United States or Luxembourg, as the case may be, or being or having been present or engaged in a trade or business in the United States or Luxembourg, as the case may be, or having or having had a permanent establishment in the United States or Luxembourg, as the case may be, or (ii) the presentation of a Note, Receipt or Coupon for payment on a date more than 15 days after the date on which such payment became due and payable or the date on which payment thereof is duly provided for, whichever occurs later;
- (b) any estate, inheritance, gift, sales, transfer, personal property or similar tax, assessment or other governmental charge;
- (c) any tax, assessment or other governmental charge imposed by reason of such Noteholder's, Receiptholder's or Couponholder's past or present status as a controlled foreign corporation with respect to the United States or as a corporation which accumulates earnings to avoid United States federal income tax;

- (d) any tax, assessment or other governmental charge which is payable otherwise than by withholding from payments of principal or interest with respect to the Notes, Receipts or Coupons;
- (e) any tax, assessment or other governmental charge imposed as a result of such Noteholder's, Receiptholder's or Couponholder's past or present status as the actual or constructive owner of 10 per cent. or more of the total combined voting power of all classes of stock of the Issuer entitled to vote;
- (f) any tax, assessment or other governmental charge imposed as a result of such Noteholder, Receiptholder or Couponholder being a bank receiving payments on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business;
- (g) any tax, assessment or other governmental charge required to be withheld by any Paying Agent from any payment of principal or interest with respect to any Note, Receipt or Coupon, if such payment can be made without such withholding by any other Paying Agent with respect to the Notes in a member state of the European Union;
- (h) any tax, assessment or other governmental charge required to be withheld or deducted where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to European Council Directive 2003/48/EC or any law implementing or complying with, or introduced in order to conform to, such Directive (including, for the avoidance of doubt, the agreements concluded by each member of the European Union with several dependant or associated territories of the European Union, aiming to apply measures similar to the ones deriving from the European Council Directive 2003/48/EC or any law implementing or complying with, or introduced in order to conform to, such agreements);
- (i) any tax, assessment or other governmental charge which would not have been imposed but for the failure to comply with certification, information or other reporting requirements concerning the nationality, residence, identity or connection with the United States or Luxembourg, as the case may be, of the Noteholder, Receiptholder or Couponholder or of the beneficial owner of such Note, Receipt or Coupon, if such compliance is required by statute or by Regulation of the United States Treasury Department or of the relevant Luxembourg authority, as the case may be, as a precondition to relief or exemption from such tax, assessment or other governmental charge; or
- (j) any combination of paragraphs (a), (b), (c), (d), (e), (f), (g), (h) and (i) above,

nor shall additional amounts be paid to any United States Alien or Luxembourg Non-resident, as the case may be, which is a fiduciary or partnership or other than the sole beneficial owner of the Note, Receipt or Coupon to the extent a beneficiary or settlor with respect to such fiduciary or a member of such partnership or a beneficial owner of the Note, Receipt or Coupon would not have been entitled to payment of the additional amounts had such beneficiary, settlor, member or beneficial owner been the holder of the Note, Receipt or Coupon.

The term "**United States Alien**" means any person that is not (i) a citizen or resident for U.S. tax purposes of the United States who is a natural person, (ii) a corporation or partnership that is created or organised in or under the laws of the United States or any state thereof (including the District of Columbia) (other than a partnership that is not treated as a United States Person, the term "**United States Person**" being used herein with the meaning given to such term in the Code and applicable Treasury regulations), (iii) an estate, the income of which is subject to United States federal income taxation regardless of its source or (iv) a trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one or more United States Persons have authority to control all substantial decisions of the trust (and any other trust that is treated as a United States Person under applicable Treasury regulations).

The term "**Luxembourg Non-resident**" means any individual, corporation, partnership or any other entity that for Luxembourg tax purposes is a non-resident individual, non-resident corporation, non-resident partnership or any other non-resident entity.

- (B) If the Issuer or the Guarantor shall determine, based upon a written opinion of independent counsel selected by the Issuer or the Guarantor, that any payment made outside the United States by the Issuer, the Guarantor or any of the Paying Agents of the full amount of the next scheduled payment in respect of any Note, Receipt or Coupon would, under any present or future laws or regulations of the United States affecting taxation or otherwise, be subject to any certification, information or other reporting requirements of any kind, the effect of which requirements is the disclosure to the Issuer, the Guarantor, any of the Paying Agents or any governmental authority of the nationality, residence or identity (as distinguished from status as a United States Alien) of a beneficial owner of such Note, Receipt or Coupon who is a United States Alien (other than such requirements which (A) would not be applicable to a payment made by the Issuer or the Guarantor to a custodian, nominee or other agent of the beneficial owner, or which can be satisfied by such a custodian, nominee or other agent certifying to the effect that such beneficial owner is a United States Alien, provided, however, in each case that payment by such custodian, nominee or agent to such beneficial owner is not otherwise subject to any requirements referred to in this sentence, (B) are applicable only to payment by a custodian, nominee or other agent of the beneficial owner to or on behalf of such beneficial owner, or (C) would not be applicable to a payment made by any other Paying Agent), the Issuer (at the election of the Guarantor) shall redeem the Notes as a whole but not in part at a redemption price equal to the Early Redemption Amount together, if applicable, with accrued interest to, but excluding, the date fixed for redemption, such redemption to take place on such date not later than one year after the publication of notice of such determination. If the Issuer or the Guarantor becomes aware of an event that might give rise to such certification, information or other reporting requirements, the Issuer or the Guarantor shall, as soon as practicable, solicit advice of independent counsel selected by the Issuer or the Guarantor to establish whether such certification, information or other reporting requirements will apply and, if such requirements will, in the written opinion of such counsel, apply, the Issuer or the Guarantor shall give prompt notice of such determination (a "Tax Notice") in accordance with Condition 13 stating in such notice the effective date of such certification, information or other reporting requirements and, if applicable, the date by which the redemption shall take place. Notwithstanding the foregoing, the Issuer shall not redeem Notes if the Issuer or the Guarantor, based upon the written opinion of independent counsel selected by the Issuer or the Guarantor, shall subsequently determine not less than 30 days prior to the date fixed for redemption that subsequent payments would not be subject to any such requirements, in which case the Issuer or the Guarantor shall give prompt notice of such determination in accordance with Condition 13 and any earlier redemption notice shall thereby be revoked and of no further effect.
- (C) Notwithstanding the foregoing, if and so long as the certification, information or other reporting requirements referred to in the preceding paragraph would be fully satisfied by payment of a backup withholding tax or similar charge, the Issuer or the Guarantor may elect prior to publication of the Tax Notice to have the provisions described in this paragraph (C) apply in lieu of the provisions described in the preceding paragraph, in which case the Tax Notice shall state the effective date of such certification, information or reporting requirements and that the Issuer, failing which the Guarantor, has elected to pay additional amounts rather than redeem the Notes. In such event, the Issuer, failing which the Guarantor, will pay as additional amounts such amounts as may be necessary so that every net payment made following the effective date of such certification, information or reporting requirements outside the United States by the Issuer or any of the Paying Agents of principal or interest due with respect to a Note, Receipt or Coupon to a holder who certifies to the effect that the beneficial owner of such Note, Receipt or Coupon is a United States Alien (provided that such certification shall not have the effect of communicating to the Issuer or any of the Paying Agents or any governmental authority the nationality, residence or identity of such beneficial owner) after deduction or withholding for or on account of such backup withholding tax or similar charge (other than a backup withholding tax or similar charge which (1) is imposed as a result of certification, information or other reporting requirements referred to in the second parenthetical clause of the first sentence of the preceding paragraph, or (2) is imposed as a result of the fact that the Issuer, the Guarantor, or any of the Paying Agents has actual knowledge that the holder or beneficial owner of such Note, Receipt or Coupon is not a United States Alien but is within the category of persons, corporations or other entities described in Condition 7A(a) above, or (3) is imposed as a result of presentation of such Note, Receipt or Coupon for payment more than 15 days after the date on which such payment becomes due and payable or on which payment thereof is duly provided for, whichever occurs later), will not be less than the amount provided for in such Note,

such Receipt or such Coupon to be then due and payable. In the event the Issuer or the Guarantor elect to pay such additional amounts, the Issuer will have the right, at its sole option, at any time, to redeem the Notes, as a whole but not in part at a redemption price equal to their Early Redemption Amount, together, if applicable, with accrued interest to the date fixed for redemption including any additional amounts required to be paid under this paragraph. If the Guarantor or the Issuer has made the determination described in the preceding paragraph with respect to certification, information or other reporting requirements applicable to interest only and subsequently makes a determination in the manner and of the nature referred to in such preceding paragraph with respect to such requirements applicable to principal, the Issuer will redeem the Notes in the manner and on the terms described in the preceding paragraph (except as provided below), unless the Guarantor or the Issuer elects to have the provisions of this paragraph apply rather than the provisions of the immediately preceding paragraph. If in such circumstances the Notes are to be redeemed, the Issuer and the Guarantor will be obligated to pay additional amounts with respect to interest, if any, accrued to the date of redemption. If the Guarantor or the Issuer has made the determination described in paragraph (B) above and subsequently makes a determination in the manner and of the nature referred to in paragraph (B) above that the level of withholding applicable to principal or interest has been increased, the Issuer will redeem the Notes in the manner and on the terms described in paragraph (B) above (except as provided below), unless the Guarantor or the Issuer elects to have the provisions of this paragraph apply rather than the provisions of paragraph (B) above. If in such circumstances the Notes are to be redeemed, the Issuer and the Guarantor will be obligated to pay additional amounts with respect to the original level of withholding on principal and interest, if any, accrued to the date of redemption.

## 8. Prescription

The Notes, Receipts and Coupons will become void unless presented for payment within a period of ten years (in the case of principal) and five years (in the case of interest) after the Relevant Date (as defined below) therefor.

As used herein, the "Relevant Date" means the date on which such payment first becomes due, except that, if the full amount of the moneys payable has not been duly received by the Principal Paying Agent on or prior to such due date, it means the date on which, the full amount of such moneys having been so received, notice to that effect is duly given to the Noteholders in accordance with Condition 13.

There shall not be included in any Coupon sheet issued on exchange of a Talon any Coupon the claim for payment in respect of which would be void pursuant to this Condition or Condition 5(B) or any Talon which would be void pursuant to Condition 5(B).

## 9. Events of Default

- (A) If any one or more of the following events (each an "Event of Default") shall occur and be continuing:
- (a) default shall be made in the payment of any payment of any amount of interest due in respect of the Notes and the default continues for a period of 30 days after the due date; or
  - (b) default shall be made in the payment of any principal of any Note or in the delivery when due of the Entitlement in respect of any Note (in each case whether at maturity or upon redemption or otherwise); or
  - (c) the Issuer or the Guarantor shall fail to perform or observe any other term, covenant or agreement contained in the Terms and Conditions applicable to any of the Notes or in the Agency Agreement or the Guarantee for the period of 60 days after the date on which written notice of such failure, requiring the Issuer or the Guarantor to remedy the same, first shall have been given to the Principal Paying Agent by holders of at least 25 per cent. of the aggregate principal amount of the outstanding Notes; or
  - (d) a court having jurisdiction in the premises shall have entered a decree or order granting relief with respect to the Issuer or the Guarantor in an involuntary proceeding under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or appointing a receiver, liquidator, trustee, assignee, custodian or sequestrator (or similar official) of the

Issuer or the Guarantor or of all or substantially all of its property or for the winding up or liquidation of its affairs, and such decree or order shall have remained in force and unstayed for a period of 60 days; or

- (e) the Issuer or the Guarantor shall institute proceedings for relief under any applicable bankruptcy, insolvency or any other similar law now or hereafter in effect, or shall consent to the institution of any such proceedings against it, or shall consent to the appointment of a receiver, liquidator, trustee, assignee, custodian or sequestrator (or similar official) of it or of all or substantially all of its property, or shall make an assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action in furtherance of any of the foregoing,

then the holders of 25 per cent. in aggregate principal amount of the outstanding Notes may, at their option, declare the Notes to be due and payable immediately at the Early Redemption Amount, together with interest, if any, accrued thereon by written notice to the Issuer and the Guarantor and the Principal Paying Agent at its main office in London, and unless all such defaults shall have been cured by the Issuer or the Guarantor prior to receipt of such written notice, this Note shall become and be immediately due and payable at the Early Redemption Amount, together with the interest, if any, accrued hereon.

At any time after such a declaration of acceleration with respect to the Notes has been made and before a judgment or decree for payment of the money due with respect to any Note has been obtained by any Noteholder, such declaration and its consequences may be rescinded and annulled upon the written consent of holders of a majority in aggregate principal amount of the Notes then outstanding, or by resolution adopted by a majority in aggregate principal amount of the Notes outstanding present or represented at a meeting of holders of the Notes at which a quorum is present, as provided in the Agency Agreement, if:

- (i) (A) the Issuer has paid or deposited with the Principal Paying Agent a sum sufficient to pay:
  - (1) all overdue amounts of interest on the Notes;
  - (2) the principal of Notes which has become due otherwise than by such declaration of acceleration; or
- (B) in the case of Notes to be redeemed by physical delivery, the Issuer has delivered the relevant assets to any agent appointed by the Issuer to deliver such assets to the Noteholders; and
- (ii) all Events of Default with respect to the Notes, other than the non-payment of the principal of the Notes which has become due solely by such declaration of acceleration, have been cured or waived as provided in paragraph (B) below.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

- (B) Any default by the Issuer or the Guarantor, other than the events described in paragraph (A)(a) or (A)(b) above or with respect to a covenant or provision which cannot be modified and amended without the written consent of the holders of all outstanding Notes, may be waived by the written consent of holders of a majority in aggregate principal amount of the Notes then outstanding affected thereby, or by resolution adopted by a majority in aggregate principal amount of such Notes then outstanding present or represented at a meeting of holders of the Notes affected thereby at which a quorum is present, as provided in the Agency Agreement.

#### **10. Replacement of Notes, Receipts, Coupons and Talons**

Should any Note, Receipt, Coupon or Talon be lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of the Principal Paying Agent upon payment by the claimant of such costs and expenses as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer may reasonably require. Mutilated or defaced Notes, Receipts, Coupons or Talons must be surrendered before replacements will be issued.

#### **11. Paying Agents and Calculation Agent**

**(A) *Paying Agents***

The names of the initial Paying Agents and their initial specified offices are set out below.

The Issuer and the Guarantor are entitled to vary or terminate the appointment of any Paying Agent and/or appoint additional or other Paying Agents and/or approve any change in the specified office through which any Paying Agent acts, provided that:

- (a) there will at all times be a Principal Paying Agent;
- (b) so long as the Notes are listed on any stock exchange or admitted to listing by any other relevant authority, there will at all times be a Paying Agent, which may be the Principal Paying Agent, with a specified office in such place as may be required by the rules and regulations of the relevant stock exchange or other relevant authority; and
- (c) there will at all times be a Paying Agent in a Member State of the European Union that will not be obliged to withhold or deduct tax pursuant to European Council Directive 2003/48/EC or any law implementing or complying with, or introduced in order to conform to, such Directive.

In addition, the Issuer and the Guarantor shall forthwith appoint a Paying Agent having a specified office in New York City in the circumstances described in Condition 5(D). Any variation, termination, appointment or change shall only take effect (other than in the case of insolvency, when it shall be of immediate effect) after not less than 30 nor more than 45 days' prior notice thereof shall have been given to the Noteholders in accordance with Condition 13.

In acting under the Agency Agreement, the Paying Agents act solely as agents of the Issuer and the Guarantor and do not assume any obligation to, or relationship of agency or trust with, any Noteholders, Receiptholders or Couponholders. The Agency Agreement contains provisions permitting any entity into which any Paying Agent is merged or converted or with which it is consolidated or to which it transfers all or substantially all of its assets to become the successor paying agent.

**(B) *Calculation Agent***

In relation to each issue of Notes, the Calculation Agent (whether it be Merrill Lynch International or another entity) acts solely as agent of the Issuer and the Guarantor and does not assume any obligation or duty to, or any relationship of agency or trust for or with, the Noteholders, Receiptholders or Couponholders. All calculations and determinations made in respect of the Notes by the Calculation Agent shall be in its sole and absolute discretion, in good faith, and shall (save in the case of manifest error) be final, conclusive and binding on the Issuer, the Guarantor, the Paying Agents and the Noteholders, Receiptholders or Couponholders. The Calculation Agent shall promptly notify the Issuer and the Principal Paying Agent upon any such calculations and determinations, and (in the absence of wilful default, bad faith or manifest error) no liability to the Issuer, the Guarantor, the Paying Agents, the Noteholders, the Receiptholders or the Couponholders shall attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions pursuant to such provisions.

The Calculation Agent may, with the consent of the Issuer, delegate any of its obligations and functions to a third party as it deems appropriate.

**12. *Exchange of Talons***

On and after the Interest Payment Date on which the final Coupon comprised in any Coupon sheet matures, the Talon (if any) forming part of such Coupon sheet may be surrendered at the specified office of the Principal Paying Agent or any other Paying Agent in exchange for a further Coupon sheet including (if such further Coupon sheet does not include Coupons to (and including) the final date for the payment of interest due in respect of the Note to which it appertains) a further Talon, subject to the provisions of Condition 8.

**13. *Notices***

All notices regarding the Notes will be deemed to be validly given if published (a) in a leading English language daily newspaper of general circulation in London and (b) if and for so long as the Notes are admitted to trading and listed on the Official List of the Luxembourg Stock Exchange, a daily newspaper of general circulation in Luxembourg and/or on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)). It is expected that any such publication in a newspaper will be made in the *Financial Times* in London and the *Luxemburger Wort* or the *Tageblatt* in Luxembourg. The Issuer shall also ensure that notices are duly published in a manner which complies with the rules of any stock exchange or other relevant authority on which the Notes are for the time being listed or by which they have been admitted to trading. Any such notice will be deemed to have been given on the date of the first publication or, where required to be published in more than one newspaper, on the date of the first publication in all required newspapers.

Until such time as any definitive Notes are issued, there may, so long as any Global Notes representing the Notes are held in their entirety on behalf of Euroclear and/or Clearstream, Luxembourg, be substituted for such publication in such newspaper(s) the delivery of the relevant notice to Euroclear and/or Clearstream, Luxembourg for communication by them to the holders of the Notes and, in addition, for so long as any Notes are listed on a stock exchange or are admitted to trading by another relevant authority and the rules of that stock exchange or relevant authority so require, such notice will be published in a daily newspaper of general circulation in the place or places required by those rules. Any such notice shall be deemed to have been given to the holders of the Notes on the day after the day on which the said notice was given to Euroclear and/or Clearstream, Luxembourg.

Notices to be given by any Noteholder shall be in writing and given by lodging the same, together (in the case of any Note in definitive form) with the relative Note or Notes, with the Principal Paying Agent. Whilst any of the Notes are represented by a Global Note, such notice may be given by any holder of a Note to the Principal Paying Agent through Euroclear and/or Clearstream, Luxembourg, as the case may be, in such manner as the Principal Paying Agent and Euroclear and/or Clearstream, Luxembourg, as the case may be, may approve for this purpose.

#### **14. Meetings of Noteholders, Modification and Waiver**

The Agency Agreement contains provisions for convening meetings of the Noteholders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of the Notes, the Receipts, the Coupons or any of the provisions of the Agency Agreement. Such a meeting may be convened by the Issuer or the Guarantor and shall be convened by the Issuer if required in writing by the Noteholders holding not less than ten per cent. in nominal amount of the Notes for the time being remaining outstanding. The quorum at any such meeting for passing an Extraordinary Resolution is one or more persons present and holding or representing in the aggregate not less than 50 per cent. in nominal amount of the Notes for the time being outstanding, or at any adjourned meeting one or more persons present whatever the nominal amount of the Notes so held or represented, except that at any meeting the business of which includes the modification of certain provisions of the Notes, the Receipts or the Coupons (including modifying the date of maturity of the Notes or any date for payment of interest thereon, reducing or cancelling the amount of principal or the Entitlement or the rate of interest payable in respect of the Notes or altering the currency of payment of the Notes, the Receipts or the Coupons), the quorum shall be one or more persons present and holding or representing not less than two-thirds in nominal amount of the Notes for the time being outstanding, or at any adjourned such meeting one or more persons present and holding or representing not less than one-third in nominal amount of the Notes for the time being outstanding. An Extraordinary Resolution passed at any meeting of the Noteholders shall be binding on all the Noteholders, whether or not they are present at the meeting, and on all Receiptholders and Couponholders.

The Principal Paying Agent and the Issuer may agree, without the consent of the Noteholders, Receiptholders or Couponholders, to:

- (a) any modification (except as mentioned above) of the Notes, the Receipts, the Coupons or Agency Agreement which is not prejudicial to the interests of the Noteholders; or

- (b) any modification of the Notes, the Receipts, the Coupons or the Agency Agreement which is of a formal, minor or technical nature or is made to correct a manifest or proven error or to comply with mandatory provisions of the law.

Any such modification shall be binding on the Noteholders, the Receiptholders and the Couponholders and any such modification shall be notified to the Noteholders in accordance with Condition 13 as soon as practicable thereafter.

**15. Further Issues**

The Issuer shall be at liberty from time to time without the consent of the Noteholders, the Receiptholders or the Couponholders to create and issue further notes having terms and conditions the same as the Notes or the same in all respects save for the amount and date of the first payment of interest thereon and so that the same shall be consolidated and form a single Series with the outstanding Notes.

If the Issuer issues further Notes of the same Series during the initial 40-day restricted period applicable to the outstanding Notes of such Series, then such 40-day period will be extended until 40 days after the later of the commencement of the offering of such further issue of Notes and the Issue Date of such further issue of Notes. In addition, if the Issuer issues further Notes of the same Series after the expiration of the 40-day restricted period, a new 40-day restricted period will be applied to such further issue of Notes without applying to the outstanding Notes. After the expiration of the new 40-day restricted period, all such Notes will be consolidated with and form a single Series with the outstanding Notes.

**16. Consolidation or Merger**

The Issuer or the Guarantor may consolidate with, or sell or convey all or substantially all of its assets to, or merge with or into any other company provided that in any such case, (i) (a) in the case of the Issuer, either the Issuer shall be the continuing company, or the successor company shall expressly assume the due and punctual payment of all amounts or delivery of all assets, as the case may be, (including additional amounts as provided in Condition 7) payable or deliverable, as applicable, with respect to the Notes, Receipts and Coupons, according to their tenor, and the due and punctual performance and observance of all of the obligations under the Conditions to be performed by the Issuer by an amendment to the Agency Agreement executed by, *inter alios*, such successor company, the Guarantor and the Principal Paying Agent, and (b) in the case of the Guarantor, the Guarantor shall be the continuing company, or the successor company shall be a company organised and existing under the laws of the United States of America or a state thereof and such successor company shall expressly assume the due and punctual payment of all amounts or delivery of all assets, as the case may be, (including additional amounts as provided in Condition 7) payable or deliverable, as applicable, with respect to the Guarantee by the execution of a new guarantee of like tenor and (ii) immediately after giving effect to such transaction, no Event of Default under Condition 9, and no event which, with notice or lapse of time or both, would become such an Event of Default shall have happened and be continuing. In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor company, such successor company shall succeed to and be substituted for the Issuer or the Guarantor, as the case may be, with the same effect as if it had been named herein as the Issuer or the Guarantor, as the case may be, and the Issuer or the Guarantor, as the case may be, except in the event of a conveyance by way of lease, shall be relieved of any further obligations under the Conditions, the Agency Agreement and the Guarantee, as applicable.

**17. Contracts (Rights of Third Parties) Act 1999**

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

**18. Governing Law and Submission to Jurisdiction**

**(A) Governing law**



The Agency Agreement, the Deed of Covenant, the Notes, the Receipts and the Coupons and any non-contractual obligations arising out of or in connection with the Agency Agreement, the Deed of Covenant, the Notes, the Receipts and the Coupons shall be governed by, and construed in accordance with, English law.

The Guarantee is governed by, and shall be construed in accordance with, New York law.

For greater certainty, Luxembourg law shall not apply, including Articles 86 to 94-8 of the Luxembourg law on commercial companies of 10th August, 1915, as amended, which are specifically excluded.

**(B)** *Submission to jurisdiction*

In relation to any legal action or proceedings arising out of or in connection with the Notes, Receipts or Coupons ("**Proceedings**"), the courts of England have exclusive jurisdiction and the Issuer and the Noteholders, Receiptholders and Couponholders submit to the exclusive jurisdiction of the English courts. The Issuer and the Noteholders, Receiptholders and Couponholders waive any objection to Proceedings in the English courts on the grounds of venue or that the Proceedings have been brought in an inconvenient forum.

For greater certainty, the Guarantor has not submitted to the jurisdiction of the English courts in the Guarantee, and claims under the Guarantee are required to be instituted in a federal or state court in the Borough of Manhattan in the City and State of New York.

**(C)** *Appointment of Process Agent*

The Issuer hereby appoints Merrill Lynch Corporate Services Limited, currently at Merrill Lynch Financial Centre, 2 King Edward Street, London EC1A 1HQ as its agent in England to receive service of process in any Proceedings in England. If for any reason such process agent ceases to act as such or no longer has an address in England, the Issuer agrees to appoint a substitute process agent and to notify the Holders of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.

### **USE OF PROCEEDS OF THE NOTES**

MLSA intends to use the net proceeds from the sale of the Notes for general corporate purposes, including making loans to ML&Co. and its subsidiaries. ML&Co. intends to use the proceeds of such loans for general corporate purposes. Such general corporate purposes may include the funding of investments in, or extensions of credit to, its subsidiaries, the funding of assets of ML&Co. and its subsidiaries, the lengthening of the average maturity of ML&Co.'s borrowings, and the financing of acquisitions. Pending such applications, the net proceeds will be applied to the reduction of short term indebtedness or temporarily invested. Management of ML&Co. expects that it will, on a recurrent basis, engage in additional financings as the need arises to finance the growth of ML&Co., through acquisitions or otherwise, or to lengthen the average maturity of its borrowings. To the extent that Notes being purchased for resale by Merrill Lynch International, Merrill Lynch Capital Markets AG or Merrill Lynch (Singapore) Pte. Ltd. are not resold, the aggregate proceeds available to ML&Co. and its subsidiaries on a consolidated basis would be reduced.

## FORM OF FINAL TERMS OF THE W&C SECURITIES

[Date]

[MERRILL LYNCH S.A.]/[MERRILL LYNCH INTERNATIONAL & CO. C.V.]

[Title of W&C Securities]

under the Merrill Lynch S.A. and Merrill Lynch International & Co. C.V.

**Note, Warrant and Certificate Programme  
unconditionally and irrevocably guaranteed as to payment and delivery obligations  
by Merrill Lynch & Co., Inc.**

[The Base Prospectus referred to below (as completed by these Final Terms) has been prepared on the basis that, except as provided in sub-paragraph (ii) below, any offer of W&C Securities in any Member State of the European Economic Area which has implemented the Prospectus Directive (2003/71/EC) (each, a "**Relevant Member State**") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the W&C Securities. Accordingly any person making or intending to make an offer of the W&C Securities may only do so:

- (i) in circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer; or
- (ii) in those Public Offer Jurisdictions mentioned in Paragraph 51 of Part A below, provided such person is one of the persons mentioned in Paragraph 51 of Part A below and that such offer is made during the Offer Period specified for such purpose therein.

Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of W&C Securities in any other circumstances].<sup>1</sup>

[The Base Prospectus referred to below (as completed by these Final Terms) has been prepared on the basis that any offer of W&C Securities in any Member State of the European Economic Area which has implemented the Prospectus Directive (2003/71/EC) (each, a "**Relevant Member State**") will be made pursuant to an exemption under the Prospectus Directive, as implemented in that Relevant Member State, from the requirement to publish a prospectus for offers of the W&C Securities. Accordingly any person making or intending to make an offer in that Relevant Member State of the W&C Securities may only do so in circumstances in which no obligation arises for the Issuer or any Dealer to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive, in each case, in relation to such offer. Neither the Issuer nor any Dealer has authorised, nor do they authorise, the making of any offer of W&C Securities in any other circumstances].<sup>2</sup>

[Each purchaser of Warrants being offered within the United States or to, or for the account or benefit of, a U.S. person is hereby notified that the offer and sale of such Warrants is being made in reliance upon an exemption from the registration requirements of the Securities Act and Investment Company Act. The exercise of the Warrants will be conditional upon the holder (and any person on whose behalf the holder is acting) being a QIB and a QP. Investors in the Warrants will be deemed to have made or be required to make certain representations and warranties in connection with purchasing the Warrants. Warrants sold in the United States or to, or for the account or benefit of U.S. persons who are QIBs and also QPs will be cash settled Warrants only and will, unless otherwise specified be sold through Merrill Lynch, Pierce, Fenner & Smith Incorporated, a U.S. registered broker dealer].<sup>3</sup>

[The W&C Securities, the Guarantee and, in certain cases, the Entitlement have not been and will not be registered under the U.S. Securities Act or under any state securities laws and the W&C Securities may not be offered, sold, transferred, pledged, delivered, exercised or redeemed, directly or indirectly, at any time within the United States or to, or for the account or benefit of, any U.S. person (as defined herein) except

<sup>1</sup> Consider including this legend where a non-exempt offer of W&C Securities is anticipated.

<sup>2</sup> Consider including this legend where only an exempt offer of W&C Securities is anticipated.

<sup>3</sup> Include in the case of Rule 144A Warrants being offered within the United States or for the benefit of U.S. Persons.

pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.]<sup>4</sup>

For the purposes hereof, "U.S. person" means (i) an individual who is a citizen or resident of the United States; (ii) a corporation, partnership or other entity treated as a corporation or partnership for United States federal income tax purposes, created or organised in or under the laws of the United States, any State thereof or the District of Columbia, or which has its principal place of business in the United States; (iii) any estate or trust which is subject to United States federal income taxation regardless of the source of its income; (iv) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and if one or more United States trustees have the authority to control all substantial decisions of the trust (or any trust which elected to be treated as a United States person prior to 20th August, 1996); (v) a pension plan for the employees, officers or principals of a corporation, partnership or other entity described in (ii) above; or (vi) any other "U.S. person" as such term may be defined in Regulation S under the Securities Act.]

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<sup>4</sup> Include except in the case of Rule 144A Warrants being offered within the United States or for the benefit of U.S. Persons.

## PART A – CONTRACTUAL TERMS

Terms used herein shall be deemed to be defined as such for the purposes of the Terms and Conditions set forth in the Base Prospectus dated 16th September, 2008 [and the supplement to the Base Prospectus dated ●] which [together] constitute[s] a base prospectus for the purposes of the Prospectus Directive (Directive 2003/71/EC) (the "**Prospectus Directive**"). This document constitutes the Final Terms of the W&C Securities described herein for the purposes of Article 5.4 of the Prospectus Directive and must be read in conjunction with the Base Prospectus [as supplemented]. Full information on the Issuer, the Guarantor and the offer of the W&C Securities is only available on the basis of the combination of these Final Terms and the Base Prospectus [as supplemented]. The Base Prospectus [and the supplement to the Base Prospectus] is [are] available for viewing during normal business hours at the registered office of the Issuer and at the specified offices of the Security Agents for the time being in London, Luxembourg, New York City, Frankfurt, Paris and Stockholm and copies may be obtained from Merrill Lynch Financial Centre, 2 King Edward Street, London EC1A 1HQ.

*[The following alternative language applies if the first tranche of an issue which is being increased was issued under a base prospectus/offering circular with an earlier date.]*

Terms used herein shall be deemed to be defined as such for the purposes of the Terms and Conditions (the "**Conditions**") set forth in the [Base Prospectus/Offering Circular] dated [original date] [and the supplement to the [Base Prospectus/Offering Circular] dated ●] [and incorporated by reference into the Base Prospectus dated 16th September, 2008].<sup>5</sup> This document constitutes the Final Terms of the W&C Securities described herein for the purposes of Article 5.4 of the Prospectus Directive (Directive 2003/71/EC) (the "**Prospectus Directive**") and must be read in conjunction with the Base Prospectus dated 16th September, 2008 [and the supplement to the Base Prospectus dated ●], which [together] constitute[s] a base prospectus for the purposes of the Prospectus Directive, [save in respect of the Conditions which are extracted from the [Base Prospectus/Offering Circular] dated [original date] and are attached hereto. Full information on the Issuer, the Guarantor and the offer of the W&C Securities is only available on the basis of the combination of these Final Terms, the Base Prospectus dated 16th September, 2008[, and the supplement to the Base Prospectus dated ●] and the [Base Prospectus/Offering Circular] dated [original date]].<sup>6</sup> Copies of [such/the] [Base Prospectus/es] [and Offering Circular] are available for viewing during normal business hours at the registered office of the Issuer and at the specified offices of the Security Agents for the time being in London, Luxembourg, New York City, Frankfurt, Paris and Stockholm and copies may be obtained from Merrill Lynch Financial Centre, 2 King Edward Street, London EC1A 1HQ.

References herein to numbered Conditions are to the terms and conditions of the W&C Securities and words and expressions defined in such terms and conditions shall bear the same meaning in these Final Terms, save as where otherwise expressly provided.

*[Include whichever of the following apply or specify as "Not Applicable" (N/A) or delete relevant provision]*

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

*[The purchase of W&C Securities involves substantial risks and is suitable only for investors who have the knowledge and experience in financial and business matters necessary to enable them to evaluate the risks and the merits of an investment in the W&C Securities. Before making an investment decision, prospective purchasers of W&C Securities should ensure that they understand the nature of the W&C Securities and the extent of their exposure to risks and that they consider carefully, in the light of their own financial circumstances, financial condition and investment objectives, all the information set forth in the Base Prospectus (including "Risk Factors" on pages 28 to 49 thereof) and these Final Terms.]*

*[Insert any specific additional risk factors]*

<sup>5</sup> Include where listing on London Stock Exchange.

<sup>6</sup> Delete where listing on London Stock Exchange.

[No person has been authorised to give any information or make any representation not contained in or not consistent with these Final Terms, or any other information supplied in connection with the W&C Securities and, if given or made, such information or representation must not be relied upon as having been authorised by the Issuer, the Guarantor or any Dealer.]

[By investing in the W&C Securities each investor represents that:

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

[These Final Terms shall also serve as a Confirmation by [name of applicable permitted dealer in the United States] pursuant to Rule 10b-10 of the Securities Exchange Act of 1934, as amended and any other applicable rules and regulations.]<sup>7</sup>

These Final Terms relate to the series of W&C Securities as set out in "Specific Provisions for each Series" below. References herein to "W&C Securities" shall be deemed to be references to the relevant [Warrants/Certificates] that are the subject of these Final Terms and references to "W&C Securities" and "W&C Security" shall be construed accordingly.

1. Issuer: [Merrill Lynch S.A.]/[Merrill Lynch International & Co. C.V.]<sup>8</sup>
2. Guarantor: Merrill Lynch & Co., Inc.

#### **SPECIFIC PROVISIONS FOR EACH SERIES**

Series Number	No. of W&C Securities Issued	[No. of Warrants per Unit	ISIN	Common Code	[Wertpapier-kennnummer (WKN) (German Security Code)	[Mnemonic (Insert in the case of a listing on Euronext Paris S.A.)	Issue Price per [W&C Security/Unit (in the case of Warrants only)]
•	•	•	•	•	•	•	•
•	•	•]	•	•	•]	•]	•

3. Consolidation: The W&C Securities are to be consolidated and form a single series with the [insert title of relevant series of W&C Securities] issued on [insert issue date]. (N.B Only applicable in relation to W&C Securities which are fungible with an existing series of W&C Securities)

<sup>7</sup> Include in the case of Rule 144A Warrants

<sup>8</sup> Merrill Lynch S.A. may only issue Certificates. Merrill Lynch International & Co. C.V. may issue Warrants or Certificates.

4. Type of W&C Securities:
- (i) [Warrants/Certificates]
- (ii) [Index Linked W&C Securities / Share Linked W&C Securities / Debt Linked W&C Securities / GDR/ADR Linked W&C Securities / FX Linked W&C Securities / Commodity Linked W&C Securities / Fund Linked W&C Securities / Inflation Linked W&C Securities / Credit Linked Certificates / (*specify other type of W&C Security*)]
5. Issue Date: [ ]
6. Exercise Date: [ ], provided that, if such date is not an Exercise Business Day, the Exercise Date shall be the immediately [preceding/succeeding] Exercise Business Day. [(the "**Scheduled Exercise Date**")], [Subject as provided in Credit Linked Condition 6, [./and] [Credit Linked Condition 7 [and] [Credit Linked Condition 9] (*include for Credit Linked Certificates*)]
- (*N.B. Only applicable in relation to European Style Warrants and Certificates*)
7. Settlement Date:
- (i) [In relation to each Actual Exercise Date (*N.B. Insert for American Style Warrants*)], [the [fifth] Business Day following the [final] Valuation Date [provided that if the occurrence of a Disrupted Day has resulted in a Valuation Date for one or more [Indices/Shares,] being adjusted as set out in the definition of "Valuation Date" set out in the [Index Linked Conditions/Share Linked Conditions], the Settlement Date shall be the fifth Business Day next following the last occurring Valuation Date in relation to any [Index/Share].] [The fifth Business Day following the last occurring Averaging Date [provided that if the occurrence of a Disrupted Day has resulted in an Averaging Date for one or more [Indices/Shares] being adjusted as set out in the definition of "Averaging Date" as set out in the [Index Linked Conditions/Share Linked Conditions], the Settlement Date shall be the fifth Business Day next following the last occurring Averaging Date in relation to any [Index/Share].] [other] (*N.B. Only applicable in relation to Cash Settled W&C Securities*)]
- [ ]
- (ii) "**Settlement Business Day**" means [ ].
- (*N.B. Only applicable in the case of Physical Delivery W&C Securities*)
8. Number of W&C Securities being issued: The number of W&C Securities being issued is set out in "Specific Provisions for each Series" above.
9. Issue Price: The issue price per [W&C Security/Unit (*in relation to Warrants only*)] is set out in "Specific Provisions for each Series" above.
10. Cash Settlement Amount: [*Insert details of how Cash Settlement Amount is to be calculated*]
11. Business Day Centre(s): [ ]
12. Settlement: Settlement will be by way of [cash payment ("**Cash Settled**") [and/or] [physical delivery ("**Physical Delivery**")].

*(N.B. Swedish Securities and Rule 144A Warrants may only be Cash Settled)*

- |     |                                     |  |
|-----|-------------------------------------|--|
| 13. | Issuer's option to vary settlement: | The Issuer [has/does not have] the option to vary settlement in respect of the W&C Securities. |
| 14. | Settlement Currency:                | [     ]  |
| 15. | Calculation Agent:                  | [Merrill Lynch International]/[other]  |

## PROVISIONS RELATING TO WARRANTS

- |       |  |  |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
|-------|--|--|-----|------------------------------|-----|------|----------------------------------|-------------------------------|-------|-------------------------|-----|------|--|--|
| 16.   | Type of Warrants:                          | <p>[European/American/other] Style<br/> <i>(N.B. Swedish Warrants may only be European Style)</i></p> <p>[If American Style:</p> <p>The Exercise Period in respect of the Warrants is from and including [ ] to and including [ ] [, or if [ ] is not an Exercise Business Day, the immediately succeeding Exercise Business Day]</p> <p>[Call/Put Warrants]</p>   |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| 17.   | [Units:                                    | <p>[Warrants must be exercised in Units. Each Unit consists of the number of Warrants set out in "Specific Provisions for each Series" above. <i>(N.B. This is in addition to any requirements relating to "Minimum Exercise Number" or "Maximum Exercise Number" set out below).</i>]</p>   |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| 18.   | Exercise Price:                            | <p>The Exercise Price per [Warrant/Unit] is [●]. <i>(N.B. This should, in the case of an Index Linked Warrants, be expressed as a monetary value).</i></p>   |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| 19.   | Automatic Exercise:                        | <p>Automatic exercise [applies/does not apply] to the Warrants.<br/> <i>(N.B. Automatic exercise will always apply to Swedish Warrants.)</i></p>   |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| 20.   | Exchange Rate:                             | <p>The Exchange Rate for conversion of any amount into the relevant settlement currency for the purposes of determining the Cash Settlement Amount is [ ].</p>   |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| 21.   | Minimum Exercise Number:                   | <p>The minimum number of Warrants that may be exercised on any day by any Holder is [ ] [and Warrants may only be exercised in integral multiples of [ ] Warrants in excess thereof].</p>  |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| 22.   | Maximum Exercise Number:                   | <p>The maximum number of Warrants that must be exercised on any day by any Holder or group of Holders (whether or not acting in concert) is [ ]. <i>(N.B. not applicable for European Style Warrants)</i></p>  |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| 23.   | Additional Amounts:                        | <p>[Applicable/Not Applicable]</p> <p>[If Applicable:</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;">(i)</td> <td style="vertical-align: top;">Notional Amount per Warrant:</td> <td style="vertical-align: top;">[ ]</td> </tr> <tr> <td style="vertical-align: top;">(ii)</td> <td style="vertical-align: top;">Additional Amount Payment Dates:</td> <td style="vertical-align: top;">[[ ] and the Settlement Date]</td> </tr> <tr> <td style="vertical-align: top;">(iii)</td> <td style="vertical-align: top;">Additional Amount Rate:</td> <td style="vertical-align: top;">[ ]</td> </tr> <tr> <td style="vertical-align: top;">(iv)</td> <td style="vertical-align: top;">Additional Amount Rate Day Count Fraction:</td> <td style="vertical-align: top;"> <p>[Actual/360]<br/>           [Actual/Actual (ISDA)]<br/>           [Actual/365 (Fixed)]<br/>           [30/360 (Floating) or 30/360 or Bond Basis]</p> </td> </tr> </table> | (i) | Notional Amount per Warrant: | [ ] | (ii) | Additional Amount Payment Dates: | [[ ] and the Settlement Date] | (iii) | Additional Amount Rate: | [ ] | (iv) | Additional Amount Rate Day Count Fraction: | <p>[Actual/360]<br/>           [Actual/Actual (ISDA)]<br/>           [Actual/365 (Fixed)]<br/>           [30/360 (Floating) or 30/360 or Bond Basis]</p> |
| (i)   | Notional Amount per Warrant:               | [ ]  |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| (ii)  | Additional Amount Payment Dates:           | [[ ] and the Settlement Date]  |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| (iii) | Additional Amount Rate:                    | [ ]  |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |
| (iv)  | Additional Amount Rate Day Count Fraction: | <p>[Actual/360]<br/>           [Actual/Actual (ISDA)]<br/>           [Actual/365 (Fixed)]<br/>           [30/360 (Floating) or 30/360 or Bond Basis]</p>   |     |                              |     |      |                                  |                               |       |                         |     |      |  |  |



- [30E/360 or Eurobond Basis]  
[30E/360 (ISDA)]  
[Exercise Date/Settlement Date/*other*]
- (v) Additional Amount Cut-off Date:
- (vi) Other terms or special conditions relating to Additional Amounts: [      ]
24. Issuer Call Option: [Applicable/Not Applicable]  
[If Applicable:
- (i) Issuer Call Option Notice Period: [      ]
- (ii) Call Option Date(s): [      ]
- (iii) Call Option Cash Settlement: [Applicable/Not Applicable]  
[If Applicable:  
Call Option Cash Settlement Amount: [      ]]]
25. Mandatory Early Exercise: [Applicable/Not Applicable]  
[If Applicable:
- (i) Mandatory Early Exercise Event: [      ]
- (ii) Mandatory Early Exercise Date: [      ]
- (iii) Mandatory Early Exercise Cash Settlement: [Applicable/Not Applicable]  
[If Applicable:  
[Mandatory Early Exercise Cash Settlement Amount: [      ]]]

#### PROVISIONS RELATING TO CERTIFICATES

26. Additional Amounts: [Applicable/Not Applicable]  
[If Applicable:
- (i) Notional Amount per Certificate: [      ]
- (ii) Additional Amount Payment Dates: [[      ] and the Settlement Date]
- (iii) Additional Amount Rate: [      ]

- (iv) Additional Amount [Actual/360]  
Rate Day Count [Actual/Actual (ISDA)]  
Fraction: [Actual/365 (Fixed)]  
[30/360 (Floating) or 30/360 or Bond Basis]  
[30E/360 or Eurobond Basis]  
[30E/360 (ISDA)]
- (v) Additional Amount  
Cut-off Date: [Exercise Date/Settlement Date/other]
- (vi) Other terms or special  
conditions relating to  
Additional Amounts: [ ]
27. Renouncement Notice Cut-Off Time: [10.00 a.m. (Milan time) on the Exercise Date/5.00 p.m. (Milan time) on the Business Day immediately following the Valuation Date.]  
  
*(N.B. only applicable in the case of Italian Listed Certificates - specify 10.00 a.m. (Milan time) on the Exercise Date where the underlying assets or bases of reference are shares listed on the Italian Stock Exchange, or indices managed by Borsa Italiana S.p.A., or otherwise specify 5.00 p.m. on the Business Day immediately following the Valuation Date.)*
28. Issuer Call Option: [Applicable/Not Applicable]  
[If Applicable:  
  
(i) Issuer Call Option  
Notice Period: [ ]  
*(Only applicable if period in Condition 28 C not appropriate)*  
  
(ii) Call Option Date(s): [ ]  
  
(iii) Call Option Cash  
Settlement: [Applicable/Not Applicable]  
[If Applicable:  
Call Option Cash  
Settlement Amount: [ ]]]
29. Mandatory Early Exercise: [Applicable/Not Applicable]  
[If Applicable:  
  
(i) Mandatory Early  
Exercise Event: [ ]  
  
(ii) Mandatory Early  
Exercise Date: [ ]  
  
(iii) Mandatory Early  
Exercise Cash  
Settlement: [Applicable/Not Applicable]  
  
[If Applicable:

- [Mandatory Early  
Exercise Cash  
Settlement Amount: [ ]]
30. Holder Put Option: [Applicable/Not Applicable]  
[If Applicable:
- (i) Holder Put Option  
Notice Period: [ ]  
(Only applicable if period in Condition 28(E) not appropriate)
- (ii) Put Option Cash  
Settlement: [Applicable/Not Applicable]  
[If Applicable:  
Put Option Cash  
Settlement Amount: [ ]]

#### PROVISIONS RELATING TO TYPE OF W&C SECURITIES

31. Index Linked W&C Securities: [Applicable/Not Applicable]  
(If not applicable, delete the remaining sub-paragraphs of this paragraph)
- [The provisions of Annex 1 of the Terms and Conditions - *Additional Terms and Conditions for Index Linked Securities* shall apply.]
- (i) Index/Basket of Indices/Index Sponsors: [ ]  
[The [ ] Index is a Multi-Exchange Index]  
[The Index Currency for the [ ] Index is [ ]]
- (ii) Averaging: [The Averaging Dates are [ ].]  
[In the event that an Averaging Date is a Disrupted Day, [Omission/Postponement/Modified Postponement] will apply.]
- (iii) Index Performance: [ ]
- (iv) Exchange Rate: [Applicable/Not Applicable]  
[insert details]
- (v) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Index Performance is [ ]. (N.B. Only applicable in relation to Index Linked W&C Securities relating to a Basket)
- (vi) Exchange(s): [ ]
- (vii) Related Exchange: [ ]/[All Exchanges]
- (viii) Valuation Date: [ ]
- (ix) Valuation Time: [ ]
- (x) Observation Date(s): [ ]
- (xi) Observation Period: [ ]
- (xii) Disrupted Day: If the Valuation Date, an Averaging Date or an Observation Date, as

the case may be, is a Disrupted Day, the relevant level or price will be calculated [*insert calculation method*].

*(N.B. Only applicable where provisions in Index Linked Conditions are not appropriate)*

(xiii) Trade Date: [ ]

(xiv) Additional Disruption Events: The following Additional Disruption Events apply to the W&C Securities:

[Change of Law]

[Hedging Disruption]

[Increased Cost of Hedging]

(xv) Other terms or special conditions: [ ]

32. Share Linked W&C Securities: [Applicable/Not Applicable]

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

[The provisions of Annex 2 of the Terms and Conditions – *Additional Terms and Conditions for Share Linked Securities* shall apply.]

(i) Share(s) / Basket of Shares: [ ]

(ii) Averaging: [The Averaging Dates are [ ].]

[In the event that an Averaging Date is a Disrupted Day, [Omission/Postponement/Modified Postponement] will apply.]

(iii) Share Performance: [ ]

(iv) Exchange Rate: [Applicable/Not Applicable]

[*insert details*]

(v) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Share Performance is [ ]. *(N.B. Only applicable in relation to Share Linked W&C Securities relating to a Basket)*

(vi) Exchange(s): [ ]

(vii) Related Exchange: [ ]/[All Exchanges]

(viii) Valuation Date: [ ]

(ix) Valuation Time: [ ]

(x) Observation Date(s): [ ]

(xi) Observation Period: [ ]

(xii) Disrupted Day: [If the Valuation Date, an Averaging Date or an Observation Date, as the case may be, is a Disrupted Day, the relevant price will be calculated [*insert calculation method*]

*(N.B. Only applicable where provisions in Share Linked Conditions are not appropriate).*

(xiii) Tender Offer: [Applicable / Not Applicable]

- (xiv) Share Substitution: [Applicable/Not Applicable]  
[If Applicable: Share Substitution Criteria is [     ].]
- (xv) Local Tax Adjustment: [Applicable/Not Applicable]  
Local Jurisdiction [     ]
- (xvi) Trade Date: [     ]
- (xvii) Additional Disruption Events: The following Additional Disruption Events apply to the W&C Securities:  
[Change of Law]  
[Hedging Disruption]  
[Increased Cost of Hedging]  
[Increased Cost of Stock Borrow]  
[Initial Stock Loan Rate: [     ]]  
[Insolvency Filing]  
[Loss of Stock Borrow]  
[Maximum Stock Loan Rate: [     ]]
- (xviii) Other terms or special conditions: [     ]
33. Debt Linked W&C Securities: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
[The provisions of Annex 3 of the Terms and Conditions – *Additional Terms and Conditions for Debt Linked Securities* shall apply.]
- (i) Debt Instruments/  
Basket of Debt  
Instruments: [     ]
- (ii) Debt Instrument  
Price: [     ]  
*(N.B. Complete only if different from definition contained in Annex 3 of the Terms and Conditions – Additional Terms and Conditions for Debt Linked Securities)*
- (iii) Averaging: Averaging [applies/does not apply to the W&C Securities]. [The Averaging Dates are [     ].]
- (iv) Valuation Date(s): [     ]
- (v) Valuation Time: [     ]
- (vi) Observation Period: [     ]
- (vii) Weighting: Weighting to be applied to each item comprising the Basket to ascertain the Debt Instrument Price is [     ]. *(N.B. Only applicable in relation to Debt Linked W&C Securities relating to a basket)*
- (viii) Scheduled Trading  
Day: [     ]

- (ix) Relevant Screen Page: The relevant screen page ("Relevant Screen Page") is [ ]
- (x) Redemption of Debt Instruments: Where one or more of the relevant Debt Instruments is redeemed (or otherwise ceases to exist) before the expiration of the W&C Securities, *[insert appropriate fallback provisions]*.
- (xi) Other terms or special conditions: [ ]
34. GDR/ADR Linked W&C Securities: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
 [The provisions of Annex 4 of the Terms and Conditions – *Additional Terms and Conditions for GDR/ADR Linked Securities* shall apply.]  
*(For GDR/ADR Linked W&C Securities complete sections for Share Linked W&C Securities (paragraph 32 above) (completed and amended as appropriate) and this Section)*
35. FX Linked W&C Securities: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
 [The provisions of Annex 5 of the Terms and Conditions – *Additional Terms and Conditions for FX Linked Securities* shall apply.]
- (i) Base Currency/Subject Currency: [ ]
- (ii) Currency Price: [ ]  
*(N.B. Complete only if different from definition contained in Annex 5 of the Terms and Conditions – Additional Terms and Conditions for FX Linked Securities)*
- (iii) FX Market Disruption Event(s): Inconvertibility Event: [Applicable/Not Applicable]  
 [other]  
*(N.B. Only complete if Inconvertibility Event and/or other disruption events should be included as FX Market Disruption Events)*
- (iv) FX Price Source(s): [ ]
- (v) Specified Financial Centre(s): [ ]
- (vi) Averaging: Averaging [applies/does not apply] to the W&C Securities. [The Averaging Dates are [ ].]
- (vii) Valuation Date: [ ]
- (viii) Valuation Time: [ ]
- (ix) Weighting: The weighting to be applied to each item comprising the Basket to ascertain the Currency Price is [ ].  
*(N.B. Only applicable in relation to FX Linked Notes relating to a Basket)*

- (x) Other terms or special conditions: [      ]
36. Commodity Linked W&C Securities: [Applicable/Not Applicable]
- (If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- [The provisions of Annex 6 of the Terms and Conditions – Additional Terms and Conditions for Commodity Linked Securities shall apply.]*
- (i) Commodity/Basket of Commodities/  
Commodity Index/Basket of Commodity Indices: [      ]
- (ii) Commodity Reference Price: [      ]
- (iii) Price Source: [      ]
- (iv) Exchange: [      ]
- (v) Delivery Date: [      ]
- (vi) Pricing Date: [      ]
- (vii) Common Pricing: [Applicable] [Not Applicable] *(N.B. Only applicable in relation to Commodity Linked W&C Securities relating to a Basket)*
- (viii) Additional Commodity Market Disruption Events: *[specify any additional Commodity Market Disruption Events]*
- Additional provisions for Commodity Trading Disruption: [Not Applicable]
- [If Trading Disruption applies, specify any additional futures contracts, options contracts or commodities and the related exchange to which Trading Disruption relates]*
- Disruption Fallback(s): [As set out in Commodity Linked Conditions]/[      ]
- [Commodity Index Cut-Off Date: [      ]]
- (ix) Commodity Business Day: [      ]
- (x) Trade Date: [      ]
- (xi) Weighting: The weighting to be applied to each item comprising the Basket is [      ]
- (N.B. Only applicable in relation to Commodity Linked W&C Securities relating to a Basket)*
- (xii) Specified Price: [high price]  
[low price]  
[average of the high price and the low price]  
[closing price]  
[opening price]  
[bid price]  
[asked price]

- [average of the bid price and the asked price]  
[settlement price]  
[official settlement price]  
[official price]  
[morning fixing]  
[afternoon fixing]  
[spot price]  
[other]
- (xiii) Other terms or special conditions: [ ]
37. Fund Linked W&C Securities: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph)*  
[The provisions of Annex 7 of the Terms and Conditions – *Additional Terms and Conditions for Fund Linked Securities* shall apply.]
- (i) Fund/Basket Funds: of [ ]  
[[The [ ] Fund is an ETF]  
[Exchange for each Fund Share: [ ]]  
[Related Exchange for each Fund Share: [ ]/All Exchanges]  
[Underlying Index: [ ]]  
*(N.B. Include for Exchange Traded Funds (ETFs)*
- (ii) Fund Interest(s): [ ]
- (iii) Trade Date: [ ]
- (iv) Valuation Date(s): [ ]
- (v) Valuation Time: [ ]
- (vi) Other terms or special conditions: [ ]
38. Inflation Linked W&C Securities: [Applicable/Not Applicable]  
*(If not applicable, delete the remaining sub-paragraphs of this paragraph.)*  
[The provisions of Annex 8 of the Terms and Conditions – *Additional Terms and Conditions for Inflation Linked Securities* shall apply.]
- (i) Inflation Index/Basket of Inflation Indices/Inflation Index Sponsor(s): [ ]
- (ii) Related Bond: [Applicable/Not Applicable]  
The Related Bond is: [ ] [Fallback Bond]  
The End Date is: [ ]
- (iii) Determination Date(s): [ ]
- (iv) Cut-Off Date: [ ]



- (v) Other terms or special conditions: [ ]
39. Credit Linked Certificates: [Applicable/Not Applicable]
- (If not applicable, delete the remaining sub-paragraphs of this paragraph)*
- [The provisions of Annex 9 of the Terms and Conditions – Additional Terms and Conditions for Credit Linked Notes and Certificates shall apply.]
- (i) Notional Amount per Certificate: [ ]
- (ii) Aggregate Notional Amount of the Certificates: [ ]
- (iii) Trade Date: [ ]
- (iv) Reference Entity(ies): [ ]
- (v) Reference Obligation(s): [ ]
- [The obligation[s] identified as follows: [ ]
- Primary Obligor: [ ]
- Guarantor: [ ]
- Maturity: [ ]
- Coupon: [ ]
- CUSIP/ISIN: [ ]
- (vi) Aggregate Notional Amount: [ ]
- (vii) Party responsible for making calculations and determinations pursuant to the Credit Linked Conditions (if not Calculation Agent): [ ]
- (viii) All Guarantees: [Applicable/Not Applicable]
- Provisions relating to Qualifying Guarantee and Underlying Obligation: Credit Linked Condition 15 [Applicable/Not Applicable]
- (ix) Credit Events: [Bankruptcy]
- [Failure to Pay]
- [Grace Period Extension [Applicable/Not Applicable]
- [If Applicable:
- Grace Period: [ ]
- [Obligation Default]

		[Obligation Acceleration]
		[Repudiation/Moratorium]
		[Restructuring]
	-	Provisions relating to Restructuring Credit Event: Credit Linked Condition 12 [Applicable/Not Applicable]
	-	Provisions relating to Multiple Holder Obligation: Credit Linked Condition 13 [Applicable/Not Applicable]
	-	[Restructuring Maturity Limitation and Fully Transferable Obligation [Applicable/Not Applicable]]
	-	[Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation [Applicable/Not Applicable]]
		[other]
	Default Requirement:	[     ]
	Payment Requirement:	[     ]
(x)	Conditions to Settlement:	Notice of Publicly Available Information [Applicable/Not Applicable]
		[If Applicable:
		Public Source(s):        [     ]]
		Specified Number:       [     ]]
(xi)	Obligation(s):	
	Obligation Category:	[Payment]
	[select one only]:	[Borrowed Money]
		[Reference Obligations Only]
		[Bond]
		[Loan]
		[Bond or Loan]
	Obligation Characteristics:	[Not Subordinated]
	[select all of which apply]:	[Credit Linked Specified Currency:
		[specify currency] [Standard Specified Currencies]
		[Not Sovereign Lender]
		[Not Domestic Currency:]
		[Domestic Currency means: [specify currency]]
		[Not Domestic Law]
		[Listed]
		[Not Domestic Issuance]
	Additional Obligation(s):	[     ]

- (xii) Excluded Obligation(s): [     ]
- (xiii) Whether on satisfaction of Conditions to Settlement during the Notice Delivery Period settlement of the Certificates will be by (a) Cash Settlement or (b) Physical Delivery: Conditions to Settlement – [Cash Settlement/Physical Delivery]
- (xiv) Accrual of Additional Amounts upon Credit Event: [Applicable/Not Applicable]
- (xv) Merger Event: Credit Linked Condition 11 [Applicable/Not Applicable]  
(If Applicable)  
[Merger Event Redemption Amount: [     ]]  
[Merger Event Redemption Date:[     ]]
- (xvi) Unwind Costs: [Standard Unwind Costs/other/Not Applicable]
- (xvii) Provisions relating to Monoline Insurer as Reference Entity: Credit Linked Condition 14 [Applicable/Not Applicable]  
*Terms relating to Cash Settlement*
- (xviii) Credit Event Redemption Amount: [     ] per Certificate
- (xix) Credit Event Redemption Date: [     ] Business Days
- (xx) Valuation Date: [Single Valuation Date:  
[     ] Business Days]  
[Multiple Valuation Dates:  
[     ] Business Days; and each [     ] Business Days thereafter  
Number of Valuation Dates: [     ]]
- (xxi) Valuation Time: [     ]
- (xxii) Quotation Method: [Bid/Offer/Mid-market]
- (xxiii) Quotation Amount: [[     ]/Representative Amount]
- (xxiv) [Minimum Quotation Amount: [     ]]
- (xxv) Quotation Dealers: [     ]
- (xxvi) Quotations: [Include Accrued Interest/Exclude Accrued Interest]
- (xxvii) Valuation Method: [Market/Highest]

- [Average Market/Highest/Average Highest]  
 [Blended Market/Blended Highest]  
 [Average Blended Market/Average Blended Highest]
- (xxviii) Other terms or special conditions: [       ]
- (xxix) Provisions relating to LPN Reference Entities: Credit Linked Condition 16 [Applicable/Not Applicable]
- (xxx) Provisions relating to Deliverable Obligation Portfolio Valuation: Credit Linked Condition 17 [Applicable/Not Applicable]
- [If applicable:  
 Benchmark  
 Obligation: [       ]
- (N.B. Deliverable Obligation Category and Deliverable Obligation Characteristics should also be completed if Credit Linked Condition 17 applies.)*

*Terms relating to  
 Physical Delivery*

- (xxxi) Physical Settlement Period: [       ] Business Days
- (xxxii) Accrued Interest on Entitlement: [Include Accrued Interest/Exclude Accrued Interest]
- (xxxiii) Settlement Currency: [       ]
- (xxxiv) Deliverable Obligations:
- Deliverable Obligation Category [Payment]  
 [Borrowed Money]  
 [select one only]: [Reference Obligations Only]  
 [Bond]  
 [Loan]  
 [Bond or Loan]
- Deliverable Obligation Characteristics [Not Subordinated]
- [select all of which apply]: [Credit Linked Specified Currency: *[specify currency]*
- [Standard Specified Currencies]
- [Not Sovereign Lender]  
 [Not Domestic Currency]  
 [Domestic Currency means: *[specify currency]*]

[Not Domestic Law]

[Listed]

[Not Contingent]

[Not Domestic Issuance]

[Assignable Loan]

[Consent Required Loan]

[Direct Loan Participation]

[Qualifying Participation Seller: *[insert details]*]

[Transferable]

[Maximum Maturity: [     ]]

[Accelerated or Matured]

[Not Bearer]

Additional [     ]

Deliverable

Obligation(s):

(xxxv) Excluded Deliverable [     ]  
Obligation(s):

(xxxvi) Indicative Quotations: [Applicable/Not Applicable]

(xxxvii) Credit Cut-Off Date: [     ]

(xxxviii) Other terms or [     ]  
special conditions:

#### **PROVISIONS FOR PHYSICAL DELIVERY**

40. Relevant Asset(s): [     ]

41. Entitlement: The Entitlement (as defined in Condition 4) in relation to each W&C Security is [     ].

The Entitlement will be evidenced by *[insert details of how the Entitlement will be evidenced]*.

The Entitlement will be delivered *[insert details of the method of delivery of the Entitlement]*.

*(N.B. paragraphs [40]- [41] only applicable in relation to Physical Delivery W&C Securities that are not Credit Linked Certificates)*

42. Guaranteed Cash Settlement Amount: The Guaranteed Cash Settlement Amount (as defined in W&C Securities Condition 3) is calculated *[specify calculation method]*.

43. Failure to Deliver due to Illiquidity: [Applicable/Not Applicable]

*(N.B. May only be applicable to Physical Delivery W&C Securities other than Credit Linked Certificates)*

## GENERAL

### 44. Form of W&C Securities:\*

[The W&C Securities are to be issued into and transferred through Euroclear and Clearstream, Luxembourg.

[Euroclear/CBL Global Warrant]

[Euroclear/CBL Temporary Global Certificate exchangeable for a Euroclear/CBL Permanent Global Certificate which is exchangeable for Definitive Certificates upon not less than 60 days' notice from Euroclear and/or Clearstream, Luxembourg, as applicable, (acting on the instructions of any holder of an interest in such Euroclear/CBL Permanent Global Certificate)]

[Euroclear/CBL Temporary Global Certificate exchangeable for Definitive Certificates on or after the Exchange Date]

[Euroclear/CBL Permanent Global Certificate exchangeable for Definitive Certificates upon not less than 60 days' notice from Euroclear and/or Clearstream, Luxembourg, as applicable, (acting on the instructions of any holder of an interest in such Euroclear/CBL Permanent Global Certificate)]]

**OR**

[The W&C Securities are to be issued into and transferred through Clearstream, Frankfurt.

[CBF Global Warrant]

[CBF Temporary Global Certificate exchangeable for a CBF Permanent Global Certificate which is exchangeable for Definitive Certificates upon not less than 60 days' notice from Clearstream, Frankfurt (acting on the instructions of any holder of an interest in such CBF Permanent Global Certificate)]

[CBF Temporary Global Certificate exchangeable for Definitive Certificates on or after the Exchange Date]

[CBF Permanent Global Certificate exchangeable for Definitive Certificates upon not less than 60 days' notice from Clearstream, Frankfurt (acting on the instructions of any holder of an interest in such CBF Permanent Global Certificate)]]

**OR**

[The W&C Securities are to be issued into and transferred through Euroclear France.

[Euroclear France Global Warrant]\*\*

**OR**

[Euroclear France Temporary Global Certificate exchangeable for a Euroclear France Permanent Global Certificate which is exchangeable for Definitive Certificates upon not less than 60 days' notice from Euroclear France (acting on the instructions of any holder of an interest in such Euroclear France Permanent Global Certificate)]\*\*

\* If MLICo. is the Issuer of the Certificates, Certificates shall be initially issued in permanent global form exchangeable for Definitive Certificates.

\*\* Only MLICo. may issue W&C Securities issued into and transferred through Euroclear France.

[Euroclear France Temporary Global Certificate exchangeable for Definitive Certificates on or after the Exchange Date]]\*\*

[Euroclear France Permanent Global Certificate exchangeable for Definitive Certificates upon not less than 60 days' notice from Euroclear France (acting on the instructions of any holder of an interest in such Euroclear France Permanent Global Certificate)]]\*\*

**OR**

[The Warrants are eligible for sale in the United States to QIBs who are also QPs or to, or for the account or benefit of U.S. persons who are QIBs and also QPs.]

[Regulation S/Rule 144A Global Warrant]/[Rule 144A Global Warrant]

[The provisions of Annex 11 of the Terms and Conditions – *Additional Terms and Conditions for Rule 144A Warrants* shall apply.]

*[N.B. Only Cash Settled Index Linked Warrants and Cash Settled Share Linked Warrants will be eligible for sale in the United States or to, or for the account or benefit of, U.S. persons]*

**OR**

[The Swedish Securities are to be issued into and cleared through the Swedish CSD.]

[The Swedish Securities will be issued in dematerialised and uncertificated book entry form in accordance with the Swedish Financial Instruments Accounts Act (in Swedish: *lag (1998:1479) om kontoföring av finansiella instrument*).]

[Each Swedish Certificate will be cancellable and exchangeable, in accordance with its terms, for a definitive Swedish Certificate of a separate Series in bearer form.]

[Definitive bearer form]

*(Only applicable where Certificates are being issued in connection with the cancellation and exchange of Swedish Dematerialised Certificates for Swedish Definitive Certificates)*

*[Insert provisions relating to exercise and settlement as agreed between the Issuer and the Swedish Certificate Agent]]*

45. Eligibility for sale in the United States to QIBs who are also QPs or to, or for the account or benefit of, U.S. persons who are QIBs and also QPs:

The Warrants are [not] eligible for sale in the United States to QIBs who are also QPs, or to, or for the account or benefit of, U.S. persons who are QIBs and also QPs.

*[(Where Cash Settled Index Linked Warrants or Cash Settled Share Linked Warrants are eligible for sale (a) in the United States to QIBs who are also QPs, or (b) to, or for the account or benefit of, U.S. persons who are QIBs and also QPs, include the following:)]*

- (a) The Rule 144A Global Warrant will be held with [the New York Warrant Agent as custodian for DTC]/[a Common Depository on behalf of Euroclear and Clearstream, Luxembourg];
- (b) Beneficial interests in Warrants held in DTC must be held through an Authorised Custodian. Each Authorised

Custodian will have agreed with the Issuer and ML&Co. not to transfer any portion of a beneficial owner's interest in the Rule 144A Global Warrant to the account of any other person at the relevant Authorised Custodian, or to the account of any other participant in DTC or otherwise, without the prior written consent of the Issuer and ML&Co. or the prior written consent of a person authorised to act on their behalf. Subsequent transfers of beneficial interests in the Warrants may only be made to persons that hold such beneficial interests through direct DTC participants that have executed and delivered to the Issuer a Custodian Letter, in the form of schedule 19 to the Agency Agreement and available from the Issuer, and that have thereby become "Authorised Custodians" with respect to the Warrants. See "Book-Entry Clearance Systems."

- (c) the Warrants [may/may not] be sold outside the United States to non-U.S. persons [(such Warrants to be represented by a Regulation S/Rule 144A Global Warrant)];
- (d) [insert applicable U.S. selling restrictions and specify details of any transfer restrictions and any necessary certifications, if different from those set out in the Terms and Conditions]; and
- (e) [specify any amendments to the form of Exercise Notice (the form of which is set out in a schedule to the Agency Agreement)].]

46. Other Final Terms:

[Not Applicable/give details]

*(When adding any other final terms consideration should be given as to whether such amendments would be acceptable as Final Terms or whether such terms constitute "significant new factors" and consequently trigger the need for a supplement to the Base Prospectus under Article 16 of the Prospectus Directive, the use of a Securities Note or "unitary" Prospectus.)*

## DISTRIBUTION

47. [The initial purchasers and [name of applicable permitted dealer in the United States] of the Warrants:

The dealer for the Warrants is [name of applicable permitted dealer in the United States], acting as principal. [Name of applicable permitted dealer in the United States] does not receive any compensation for the sales in which it participates.

*(Applicable where Cash Settled Index Linked Warrants or Share Linked Warrants are eligible for sale (a) in the United States to QIBs who are also QPs or (b) to, or for the account or benefit of, U.S. persons who are QIBs and also QPs.)]*

48. Method of distribution:

[Syndicated/Non-Syndicated]

- (i) If syndicated, names and addresses of Managers and underwriting commitments:

[Not Applicable/give names, and addresses and underwriting commitments]

*(Including names and addresses of entities agreeing to underwrite the issue on a firm commitment basis and names and addresses of the entities agreeing to place the issue without a firm commitment or on a "best efforts" basis if such entities are not the same as the Managers)*



(ii) Date of Subscription [ ]  
Agreement:

49. If non-syndicated, name and [Not Applicable/give name and address]  
address of relevant Dealer:

50. [Total commission and [ ]]  
concession:

51. Non exempt Offer\*: [Not Applicable] [An offer of the W&C Securities may be made by the Manager[s] [and [specify names [and addresses] of other financial intermediaries making non-exempt offers, to the extent known OR consider a generic description of other parties involved in non-exempt offers (e.g. "other parties authorised by the Managers") or (if relevant) note that other parties may make non-exempt offers in the Public Offer Jurisdictions during the Offer Period, if not known]] (together with the Managers, the "Financial Intermediaries") other than pursuant to Article 3(2) of the Prospectus Directive in [specify relevant Member State(s) – which must be jurisdictions where the Base Prospectus and any supplements have been passported (in addition to the jurisdiction where approved and published)] ("Public Offer Jurisdictions") during the period from [specify date] until [specify date or a formula such as "the Issue Date" or "the date which falls [●] Business Days thereafter"] ("Offer Period"). See further Paragraph 16 of Part B below.

*(N.B. Consider any local regulatory requirements necessary to be fulfilled so as to be able to make a non-exempt offer in relevant jurisdictions. No such offer should be made in any relevant jurisdiction until those requirements have been met. Non-exempt offers may only be made into jurisdictions in which the base prospectus (and any supplement) has been notified/passported.)*

52. Additional selling restrictions: [Not Applicable/give details]

## PURPOSE OF FINAL TERMS

These Final Terms comprise the final terms required for issue [and] [public offer in the Public Offer Jurisdictions] [and] [admission to trading on [specify relevant regulated market (for example the Luxembourg Stock Exchange) and, if relevant, admission to an official list (for example, the Official List of the Luxembourg Stock Exchange)]] of the W&C Securities described herein pursuant to the Note, Warrant and Certificate Programme of Merrill Lynch S.A. and Merrill Lynch International & Co. C.V.

## RESPONSIBILITY

[[Subject as provided below,] the Issuer and the Guarantor accept responsibility for the information contained in these Final Terms.] [The information relating to ● [and ●] contained herein has been accurately extracted from [insert information source(s)]. The Issuer and the Guarantor accept responsibility for the accuracy of such extraction but accept no further or other responsibility in respect of such information.]

Signed on behalf of the Issuer:

By:.....

*Duly authorised*

---

\* Not relevant for an issue of W&C Securities with an issue price equal to or greater than EUR 50,000 (or its equivalent in another currency).

## PART B – OTHER INFORMATION

### 1. LISTING AND ADMISSION TO TRADING

Listing and Admission to trading: [Application [has been]/[will be] made by the Issuer (or on its behalf) for the W&C Securities to be admitted to trading on [the regulated market of/the alternative market – Euro MTF - of,] and listed on the Official List of the Luxembourg Stock Exchange] [with effect from [ ]]. [Application is expected to be made by the Issuer (or on its behalf) for the W&C Securities to be admitted to trading on [the regulated market of/the alternative market – Euro MTF – of,], and listed on the Official List of the Luxembourg Stock Exchange] with effect from [ ].] [Not Applicable.]

*(N.B. Certificates issued by MLSA should be listed on a "recognised stock exchange".)*

*(Where documenting a fungible issue need to indicate that original securities are already admitted to trading)\*\**

### 2. INTERESTS OF NATURAL AND LEGAL PERSONS INVOLVED IN THE ISSUE

[Save for any fees payable to the [Managers/Dealers], so far as the Issuer is aware, no person involved in the issue of the W&C Securities has an interest material to the offer - *amend as appropriate if there are other interests*]

*[(When adding any other description, consideration should be given as to whether such matters described constitute "significant new factors" and consequently trigger the need for a supplement to the Base Prospectus under Article 16 of the Prospectus Directive or the use of a Securities Note or "unitary" prospectus.)]*

### 3. REASONS FOR THE OFFER, ESTIMATED NET PROCEEDS AND TOTAL EXPENSES

(i) [Reasons for the offer: [ ]]

*(See "Use of Proceeds" wording in Base Prospectus – if reasons for offer different from making profit and/or hedging certain risks will need to include those reasons here)]*

(ii) Estimated net proceeds: [ ]

*(If proceeds are intended for more than one use will need to split out and present in order of priority. If proceeds insufficient to fund all proposed uses state amount and sources of other funding)*

(iii) Estimated total expenses: [ ] [Expenses are required to be broken down into each principal intended "use" and presented in order of priority of such "uses".]

*(i) above is required where the reasons for the offer are different from making profit and/or hedging certain risks and where in this case disclosure of net proceeds and total expenses at (ii) and (iii) above are also required.*

### 4. YIELD (*Fixed Rate Certificates Only*)

Indication of yield: [ ]

*[Calculated as [include details of method of calculation in summary form] on the Issue Date.]*

*The yield is calculated at the Issue Date on the basis of the Issue Price. It is not an indication of future yield.*

**5. HISTORIC INTEREST RATES (*Floating Rate Certificates Only*)**

Details of historic [EURIBOR/LIBOR/other] rates can be obtained from [Reuters].

**6. PERFORMANCE OF [INDEX/BASKET OF INDICES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING THE [INDEX/BASKET OF INDICES]] (*INDEX LINKED W&C SECURITIES ONLY*)**

*[Need to include details of where past and future performance and volatility of [the/each] index can be obtained, the relevant weighting of each index within a basket of indices and where pricing information is available]. [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]*

*[Need to include the name of [the/each] index, the name of [the/each] index sponsor and a description if composed by the Issuer and if the index is not composed by the Issuer need to include details of where the information about [the/each] index can be obtained.]*

*[Where Certificates are offered to the public in Italy consider including Cash Settlement Amount yield scenarios, i.e. positive scenario, intermediate scenario and worst case scenario; consider including back testing simulation; and include the source of all third party information]*

**7. PERFORMANCE OF [THE SHARE/BASKET OF SHARES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE SHARE/BASKET OF SHARES]] (*SHARE LINKED W&C SECURITIES ONLY*)**

*[Need to include details of the name of [the/each] share company, any security identification number of the shares, where pricing information about the shares is available, the relevant weighting of each share within a basket of shares (if relevant) and where past and future performance and volatility of the [share/basket of shares] can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]*

*[Where Certificates are offered to the public in Italy consider including Cash Settlement Amount yield scenarios, i.e. positive scenario, intermediate scenario and worst case scenario; consider including back testing simulation; and include the source of all third party information]*

**8. INFORMATION IN RELATION TO THE DEBT INSTRUMENT/INSTRUMENTS, EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING THE DEBT INSTRUMENT/INSTRUMENTS] (*DEBT LINKED W&C SECURITIES ONLY*)**

*[Need to include details of the name of the issuer, the ISIN (International Securities Identification Number) of the debt instrument(s), the relevant weighting of each debt instrument in a basket of debt instruments (if relevant) and where pricing information on and where past and future performance and volatility of the debt instrument(s) can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]*

*[Where Certificates are offered to the public in Italy consider including Cash Settlement Amount yield scenarios, i.e. positive scenario, intermediate scenario and worst case scenario; consider including back testing simulation; and include the source of all third party information]*

**9. PERFORMANCE OF [THE GDR/ADRs], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE GDR/ADRs]] (*GDR/ADR LINKED W&C SECURITIES ONLY*)**

*[Need to include details of the name of [the/each] GDR and/or ADR, any security identification number of the GDRs and/or ADRs, where pricing information about the GDRs and/or ADRs is available, and where past and future performance and volatility of the GDRs and/or ADRs can be*

obtained.] *[Need to include a clear and comprehensive explanation of how the value of the investment is affected by the GDRs and/or ADRs and the circumstances when the risks are most evident.]*

*[Where Certificates are offered to the public in Italy consider including Cash Settlement Amount yield scenarios, i.e. positive scenario, intermediate scenario and worst case scenario; consider including back testing simulation; and include the source of all third party information]*

**10. PERFORMANCE OF [RATE[S] OF EXCHANGE/CURRENCIES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE [RATE[S] OF EXCHANGE/ FORMULA/ CURRENCIES]] (FX LINKED W&C SECURITIES ONLY)**

*[Need to include details of [the/each] currency, where past and future performance and volatility of the relevant [rate(s)/currencies] can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]*

*[Where Certificates are offered to the public in Italy consider including Cash Settlement Amount yield scenarios, i.e. positive scenario, intermediate scenario and worst case scenario; consider including back testing simulation; and include the source of all third party information]*

**11. PERFORMANCE OF [THE COMMODITY/BASKET OF COMMODITIES/COMMODITY INDEX/BASKET OF COMMODITY INDICES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE COMMODITY/BASKET OF COMMODITIES/COMMODITY INDEX/BASKET OF COMMODITY INDICES]] (COMMODITY LINKED W&C SECURITIES ONLY)**

*[Need to include details of [the/each] [commodity/commodity index], where pricing information about [the/each] [commodity/commodity index] is available, the relevant weighting of each [commodity/commodity index] within a [basket of commodities/commodity indices] and where past and future performance and volatility of [the commodity/basket of commodities/commodity index/basket of commodity indices] can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]*

*[Where Certificates are offered to the public in Italy consider including Cash Settlement Amount yield scenarios, i.e. positive scenario, intermediate scenario and worst case scenario; consider including back testing simulation; and include the source of all third party information]*

**12. PERFORMANCE OF [THE FUND/BASKET OF FUNDS], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE FUND /BASKET OF FUNDS]] (FUND LINKED W&C SECURITIES ONLY)**

*[Need to include details of [the/each] fund, the relevant weighting of each fund within a basket of funds and where past and future performance and volatility of [the/each] [fund/basket of funds] can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]*

*[Where Certificates are offered to the public in Italy consider including Cash Settlement Amount yield scenarios, i.e. positive scenario, intermediate scenario and worst case scenario; consider including back testing simulation; and include the source of all third party information]*

**13. PERFORMANCE OF [INFLATION INDEX/BASKET OF INFLATION INDICES], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING THE [INFLATION INDEX/BASKET OF INFLATION INDICES]] (INFLATION LINKED W&C SECURITIES ONLY)**

*[Need to include details of where past and future performance and volatility of [the/each] inflation index can be obtained, the relevant weighting of each inflation index within a basket of indices and where pricing information is available]. [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]*

*[Need to include the name of [the/each] inflation index, the name of [the/each] inflation index sponsor and a description if composed by the Issuer and if the inflation index is not composed by the Issuer need to include details of where [the/each] information about the inflation index can be obtained.]*

*[Where Certificates are offered to the public in Italy consider including Cash Settlement Amount yield scenarios, i.e. positive scenario, intermediate scenario and worst case scenario; consider including back testing simulation; and include the source of all third party information]*

**14. PERFORMANCE OF [THE REFERENCES ENTITY], EXPLANATION OF EFFECT ON VALUE OF INVESTMENT AND ASSOCIATED RISKS [AND OTHER INFORMATION CONCERNING [THE/EACH] REFERENCES ENTITY]] (CREDIT LINKED CERTIFICATES ONLY)**

*[Need to include details of [the/each] reference entity and where information on [the/each] reference entity can be obtained.] [Need to include a clear and comprehensive explanation of how the value of the investment is affected by the underlying and the circumstances when the risks are most evident.]*

*[Where Certificates are offered to the public in Italy consider including Cash Settlement Amount yield scenarios, i.e. positive scenario, intermediate scenario and worst case scenario; consider including back testing simulation; and include the source of all third party information]*

**15. OPERATIONAL INFORMATION**

- |  |  |
|--|--|
| (i) ISIN Code:   | [The ISIN Code is set out in "Specific Provisions for each Series" above]  |
| (ii) Common Code:  | [The Common Code is set out in "Specific Provisions for each Series" above]  |
| (iii) Wertpapierkennnummer (WKN) (German Security Code):                       | [The WKN is set out in "Specific Provisions for each Series" above]  |
| (iv) Mnemonic: (insert in case of a listing on Euronext Paris S.A.):           | [The Mnemonic is set out in "Specific Provisions for each Series" above]   |
| (v) [(insert here any other relevant codes such as CUSIP and CNS codes)]:      | [ ]  |
| (vi) [Clearing System(s):]   | [Euroclear Bank S.A./N.V.] [and]/<br>[Clearstream Banking, société anonyme]/[Clearstream Banking AG, Frankfurt am Main] [Euroclear France S.A.]/[DTC]/[VPC AB, Regeringsgatan 65, Box 7822, SE-103 97 Stockholm, Sweden/specify other duly authorised Swedish central securities depository under the Swedish CSD Rules] |
| (vii) [Any clearing system(s) other than Euroclear Bank S.A./N.V., Clearstream | [Not Applicable/give name(s) and number(s)]  |

Banking, *société anonyme*, Clearstream  
Banking AG, Frankfurt am Main  
Euroclear France, DTC and VPC AB,  
Regeringsgatan 65, Box 7822, SE-103 97  
Stockholm, Sweden or a duly authorised  
Swedish central securities depository  
under the Swedish CSD Rules and the  
relevant identification number(s):]

(viii) [Names and addresses of initial Security [ ].  
Agents:]

**16. TERMS AND CONDITIONS OF THE OFFER (*Public Offer Only*)**

Offer Price:	[Issue Price][Not Applicable][ <i>specify</i> ]
[Conditions to which the offer is subject:]	[Not Applicable/ <i>give details</i> ]
[Description of the application process:]	[Not Applicable/ <i>give details</i> ]
[Details of the minimum and/or maximum amount of application:]	[Not Applicable/ <i>give details</i> ]
[Description of possibility to reduce subscriptions and manner for refunding excess amount paid by applicants:]	[Not Applicable/ <i>give details</i> ]
[Details of the method and time limits for paying up and delivering the W&C Securities:]	[Not Applicable/ <i>give details</i> ]
[Manner in and date on which results of the offer are to be made public:]	[Not Applicable/ <i>give details</i> ]
[Procedure for exercise of any right of pre-emption, negotiability of subscription rights and treatment of subscription rights not exercised:]	[Not Applicable/ <i>give details</i> ]
[Categories of potential investors to which the W&C Securities are offered and whether tranche(s) have been reserved for certain countries:]	[Not Applicable/ <i>give details</i> ]
[Process for notification to applicants of the amount allotted and the indication whether dealing may begin before notification is made:]	[Not Applicable/ <i>give details</i> ]
[Amount of any expenses and taxes specifically charged to the subscriber or purchaser:]	[Not Applicable/ <i>give details</i> ]

**17. [FORM OF NOTICE FROM BENEFICIAL OWNER TO FINANCIAL INTERMEDIARY]**

**[NOTICE FROM THE BENEFICIAL OWNER TO HIS/HER FINANCIAL INTERMEDIARY**  
(to be completed by the beneficial owner of the Certificates for the valid renouncement of the automatic exercise of the Certificates)

[Merrill Lynch S.A./Merrill Lynch International & Co. C.V.]

[insert title of Certificates]

ISIN: [     ]

(the "Certificates")

[To:    Financial Intermediary  
      (the "Financial Intermediary")]

We the undersigned beneficial owner(s) of the Certificates hereby communicate that we are renouncing the automatic exercise on the Exercise Date of the rights granted by the Certificates in accordance with the Terms and Conditions of the Certificates.

The undersigned understands that if this notice is not duly completed and delivered in order to enable the Holder to renounce the automatic exercise of the Certificates prior to the Renouncement Notice Cut-Off Time, or if this notice is determined to be incomplete or not in proper form (in the determination of the Financial Intermediary) it will be treated as null and void.

ISIN Code/Series number of the Certificates: [   ]

Number of Certificates the subject of this notice: [   ]

Name of beneficial owner of the Certificates

\_\_\_\_\_  
Signature ]\*

\* Insert in the case of Italian Listed Certificates

## TERMS AND CONDITIONS OF THE W&C SECURITIES

*The following is the text of the Terms and Conditions of the W&C Securities which will apply to each issue of W&C Securities and which will include the Additional Terms and Conditions contained in Annex 1 in the case of Index Linked Securities, Annex 2 in the case of Share Linked Securities, Annex 3 in the case of Debt Linked Securities, Annex 4 in the case of GDR/ADR Linked Securities, Annex 5 in the case of FX Linked Securities, Annex 6 in the case of Commodity Linked Securities, Annex 7 in the case of Fund Linked Securities, Annex 8 in the case of Inflation Linked Securities, Annex 9 in the case of Credit Linked Notes and Certificates and Annex 11 in the case of Rule 144A Warrants. The Registration Document (the "Registration Document") relating to the Programme and applicable Summary (if applicable) and Securities Note (the "Securities Note"), relating to a particular series of W&C Securities may also be used in connection with the issue of W&C Securities under the Programme and such applicable Securities Note may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with the following Terms and Conditions, replace or modify the following Terms and Conditions for the purpose of such W&C Securities. To the extent that W&C Securities are issued pursuant to a Securities Note, references in the following Terms and Conditions to the "Final Terms" shall be read as references to the "Securities Note" in respect of such series of W&C Securities, and all such references shall be construed accordingly.*

The series of W&C Securities described in the applicable Final Terms (insofar as it relates to such series of W&C Securities) (such W&C Securities being hereinafter referred to as the **"W&C Securities"**) are issued by whichever of Merrill Lynch S.A. (in the case of Certificates only) (**"MLSA"**) or Merrill Lynch International & Co. C.V. (**"MLICo."**) (in the case of Warrants and Certificates) is specified as the Issuer in the applicable Final Terms (the **"Issuer"**) and references to the Issuer shall be construed accordingly. W&C Securities will be either warrants (**"Warrants"**) or certificates (**"Certificates"**), as specified in the applicable Final Terms, and references in these Terms and Conditions to **"W&C Security"**, **"W&C Securities"**, **"Warrant"**, **"Warrants"**, **"Certificate"** and **"Certificates"** will be construed accordingly.

The W&C Securities are issued pursuant to an Agency Agreement dated 16th September, 2008 between, inter alia, MLSA, MLICo., Merrill Lynch & Co., Inc. (**"ML&Co."**) as guarantor, Deutsche Bank AG, London Branch as principal paying agent, The Bank of New York Mellon, London Branch as principal warrant agent (the **"Principal Warrant Agent"**, which expression shall include any successor principal warrant agent), The Bank of New York (Luxembourg) S.A. as Luxembourg warrant agent (the **"Luxembourg Warrant Agent"**), The Bank of New York Mellon as New York warrant agent (the **"New York Warrant Agent"**), BNP Paribas Securities Services S.A., Frankfurt Branch as Frankfurt warrant agent (the **"Frankfurt Warrant Agent"**), BNP Paribas Securities Services S.A., Paris Branch as Paris security agent (the **"Paris Security Agent"**), BNP Paribas Securities Services S.A., Frankfurt Branch as principal certificate agent (the **"Principal Certificate Agent"**, which expression shall include any successor principal certificate agent), Deutsche Bank Luxembourg S.A. as Luxembourg certificate agent (the **"Luxembourg Certificate Agent"**) and Skandinaviska Enskilda Banken AB (publ) as Swedish security agent (the **"Swedish Security Agent"**).

In connection with each issue of Warrants, references herein to the **"Principal Security Agent"**, the **"Luxembourg Security Agent"** and the **"Frankfurt Security Agent"** shall be deemed to be references to the Principal Warrant Agent, the Luxembourg Warrant Agent and the Frankfurt Warrant Agent respectively where the context admits and references to **"Security Agents"** shall be deemed to be references to such agents, the New York Warrant Agent, the Swedish Security Agent and the Paris Security Agent and any additional or successor to such agents collectively.

In connection with each issue of Certificates, references herein to the **"Principal Security Agent"**, the **"Luxembourg Security Agent"** and the **"Frankfurt Security Agent"** shall be deemed to be references to the Principal Certificate Agent, the Luxembourg Certificate Agent and the Principal Certificate Agent respectively where the context admits and references to **"Security Agents"** shall be deemed to be references to such agents, the Swedish Security Agent and the Paris Security Agent and any additional or successor to such agents collectively.

Merrill Lynch International shall undertake the duties of calculation agent (the **"Calculation Agent"**) in respect of the W&C Securities unless another entity is so specified as the calculation agent in the applicable



**Final Terms.** The expression Calculation Agent shall, in relation to the relevant W&C Securities, include such other specified Calculation Agent.

Except in the case of Swedish Dematerialised Securities, the applicable Final Terms for the W&C Securities is attached to the Global W&C Security or to the Definitive Certificate, as the case may be. In the case of Swedish Dematerialised Securities, the applicable Final Terms (which for the avoidance of doubt may be issued in respect of more than one series of Swedish Dematerialised Securities) for the Swedish Dematerialised Securities is available from Merrill Lynch International, Merrill Lynch Financial Centre, 2 King Edward Street, London EC1A 1HQ.

The applicable Final Terms (the "**Final Terms**") for the W&C Securities supplements these Terms and Conditions (the "**Terms and Conditions**", or the "**Conditions**") and may specify other terms and conditions which shall, to the extent so specified or to the extent inconsistent with these Terms and Conditions, supplement, replace or modify these Terms and Conditions for the purposes of the W&C Securities. References herein to the "applicable Final Terms" are to Part A of the Final Terms or each Final Terms (in the case of any further securities issued pursuant to Condition 13 and forming a single series with the W&C Securities) (which for the avoidance of doubt may be issued in respect of more than one series of W&C Securities) attached to the Global W&C Security or to the Definitive Certificate, as the case may be, or made available as provided in the preceding paragraph insofar as it relates to the W&C Securities.

The obligations of the Issuer with respect to physical delivery (if applicable) and/or the payment of amounts payable by the Issuer are guaranteed by ML&Co. (the "**Guarantor**") pursuant to a guarantee (the "**Guarantee**") dated 16th September, 2008 executed by the Guarantor. The original of the Guarantee is held by Deutsche Bank AG, London Branch at its specified office currently at Winchester House, 1 Great Winchester Street, London EC2N 2DB.

Copies of the Agency Agreement (which contains the form of the Final Terms), the Guarantee and the applicable Final Terms (subject as provided below) may be obtained during normal office hours from the specified offices of the Security Agents save that, if the relevant W&C Securities are neither admitted to trading on a regulated market in the European Economic Area nor offered in the European Economic Area in circumstances where a prospectus is required to be published under the Prospectus Directive, the applicable Final Terms will only be obtainable by a Holder (as defined in Condition 1(B), or Annex 11 to the Terms and Conditions – *Additional Terms and Conditions for Rule 144A Warrants* as applicable) holding one or more W&C Securities and such Holder must produce evidence satisfactory to the Issuer or the relevant Security Agent as to its holding of such W&C Securities and its identity.

Words and expressions defined in the Agency Agreement or used in the applicable Final Terms shall have the same meanings where used in these Terms and Conditions unless the context otherwise requires or unless otherwise stated.

The Holders are entitled to the benefit of and are deemed to have notice of and are bound by all the provisions of the Agency Agreement (insofar as they relate to the W&C Securities) and the applicable Final Terms, which are binding on them.

## **1. Type, Title and Transfer**

### **(A) Type**

The W&C Securities relate to a specified Index or basket of Indices ("**Index Linked W&C Securities**"), a specified Share or basket of Shares ("**Share Linked W&C Securities**"), a specified debt instrument or basket of debt instruments ("**Debt Linked W&C Securities**"), a specified American Depositary Receipt (an "**ADR**") and/or Global Depositary Receipt (a "**GDR**") referencing a share (the "**Underlying Share**") or basket of such GDRs and/or ADRs ("**GDR/ADR Linked W&C Securities**"), a specified currency or basket of currencies ("**FX Linked W&C Securities**"), a specified commodity or commodity index or basket of commodities and/or commodity indices ("**Commodity Linked W&C Securities**"), a specified fund share or unit or basket of fund shares or units ("**Fund Linked W&C Securities**"), a specified inflation index ("**Inflation Linked W&C Securities**"), or the credit of a specified reference entity or reference entities ("**Credit Linked Certificates**") or any other or further type of securities as is specified in the applicable Final Terms. The applicable Final Terms will specify which of the Additional Terms and Conditions for Index

Linked Securities, the Additional Terms and Conditions for Share Linked Securities, the Additional Terms and Conditions for Debt Linked Securities, the Additional Terms and Conditions for GDR/ADR Linked Securities, the Additional Terms and Conditions for FX Linked Securities, the Additional Terms and Conditions for Commodity Linked Securities, the Additional Terms and Conditions for Fund Linked Securities, the Additional Terms and Conditions for Inflation Linked Securities, the Additional Terms and Conditions for Credit Linked Notes and Certificates or the Additional Terms and Conditions for Rule 144A Warrants, in each case set out in the Annexes to these Conditions, apply to the W&C Securities.

The applicable Final Terms will indicate whether settlement shall be by way of cash payment ("**Cash Settled W&C Securities**") or physical delivery ("**Physical Delivery W&C Securities**") and whether Averaging ("**Averaging**") will apply to the W&C Securities.

If Averaging is specified as applying in the applicable Final Terms, the applicable Final Terms will state the relevant Averaging Dates and, in respect of Index Linked Securities and Share Linked Securities, if an Averaging Date is a Disrupted Day, whether Omission, Postponement or Modified Postponement applies.

References in these Terms and Conditions, unless the context otherwise requires, to Cash Settled W&C Securities shall be deemed to include references to Physical Delivery W&C Securities, which include an option (as set out in the applicable Final Terms) at the Issuer's election to request cash settlement of such W&C Security and where settlement is to be by way of cash payment, and references in these Terms and Conditions, unless the context otherwise requires, to Physical Delivery W&C Securities shall be deemed to include references to Cash Settled W&C Securities which include an option (as set out in the applicable Final Terms) at the Issuer's election to request physical delivery of the relevant underlying asset in settlement of such W&C Security and where settlement is to be by way of physical delivery.

W&C Securities may, if so specified and provided for in the applicable Final Terms, allow holders to elect for settlement by way of cash payment or by way of physical delivery or by such other method of settlement as is specified in the applicable Final Terms. Those W&C Securities where the holder has elected for cash payment will be Cash Settled W&C Securities and those W&C Securities where the holder has elected for physical delivery will be Physical Delivery W&C Securities. The rights of a holder as described in this paragraph may be subject to the Issuer's right to vary settlement if so indicated in the applicable Final Terms.

**(B) Title to W&C Securities**

For so long as the W&C Securities are represented by a Global W&C Security, each person who is for the time being shown in the records of a Clearing System as the holder of a particular number of W&C Securities (in which regard any certificate or other document issued by such Clearing System as to the number of W&C Securities standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by the Issuer, the Guarantor and any Security Agent as the holder of such number of W&C Securities for all purposes (and the expression "Holder" and related expressions shall be construed accordingly).

In the case of Swedish Dematerialised Securities, the holder of any such W&C Security will be the person in whose name such W&C Security is registered in the Swedish Register in accordance with the Swedish CSD Rules and the reference to a person in whose name a Swedish Dematerialised Security is so registered shall include any person duly authorised to act as a nominee (in Swedish: *förvaltare*) and registered as such for the Swedish Dematerialised Securities and except as ordered by a court of competent jurisdiction or as required by law, such holder of such W&C Security shall be deemed to be and may be treated as its absolute owner for all purposes, whether or not it is overdue and regardless of any notice of ownership, trust or an interest in it and no person shall be liable for so treating such holder (and the expressions "Holder" and related expressions shall be construed accordingly). The Issuer shall be entitled to obtain information from the Swedish Register in accordance with the Swedish CSD Rules.

(C) *Transfers of W&C Securities*

For so long as the W&C Securities are represented by a Global W&C Security, all transactions (including permitted transfers of W&C Securities) in the open market or otherwise must be effected through an account at a Clearing System subject to and in accordance with the rules and procedures for the time being of such Clearing System. Title will pass upon registration of the transfer in the books of each Clearing System.

In the case of Swedish Dematerialised Securities, the W&C Securities will be issued, cleared, settled and transferable only in accordance with the provisions of the Swedish CSD Rules. Title to Swedish Dematerialised Securities will pass by registration in the Swedish Register. Where a nominee is registered as a holder of Swedish Dematerialised Securities it shall be treated for all purposes as the holder of such Swedish Dematerialised Securities.

Any reference herein to Euroclear and/or Clearstream, Luxembourg or Clearstream, Frankfurt or Euroclear France shall, whenever the context so permits, be deemed to include a reference to any additional or alternative clearing system approved by the Issuer and the Principal Security Agent from time to time and notified to the Holders in accordance with Condition 10.

2. **Status of the W&C Securities and Guarantee**

The W&C Securities constitute direct, unsubordinated, unconditional and unsecured obligations of the Issuer and rank equally among themselves and rank equally (subject to such exceptions as are from time to time provided by applicable laws) with all other present and future direct, unsubordinated, unconditional and unsecured obligations of the Issuer.

The obligations of the Guarantor under the Guarantee, save for such exceptions as may be provided by applicable legislation or judicial order, rank *pari passu* with its other present and future unsecured and unsubordinated indebtedness.

3. **Guarantee**

Under the Guarantee, the Guarantor has unconditionally and irrevocably guaranteed to the Holders, (i) the due and punctual payment of any and all amounts payable by the Issuer as obligor in respect of the W&C Securities and (ii) subject as provided below, the due and punctual performance of any and all obligations of the Issuer with respect to physical delivery of non-cash consideration deliverable by the relevant Issuer in respect of the W&C Securities, if applicable, when and as the same shall become due and payable or when the same shall become due for performance pursuant to the Conditions and to the extent provided in the Guarantee. As more fully set forth in the Guarantee, the Guarantor shall at all times have the right, at its sole and unfettered discretion, to elect not to deliver or procure delivery of the Entitlement to the holders of such Physical Delivery W&C Securities when the same shall become due and deliverable, but in lieu thereof to pay an amount in cash equal to the guaranteed cash settlement amount calculated pursuant to the terms of, or as specified in, the relevant Final Terms or Securities Note (the "**Guaranteed Cash Settlement Amount**"). Any payment of the Guaranteed Cash Settlement Amount in lieu of the Entitlement shall constitute a complete discharge of the Guarantor's obligations in respect of such Physical Delivery W&C Securities.

4. **Definitions**

For the purposes of these Terms and Conditions, the following general definitions will apply:

"**Actual Exercise Date**" means the Exercise Date (in the case of European Style Warrants or Certificates), or, subject to Condition 22(F)(a)(ii), the date during the Exercise Period on which the Warrant is actually or is deemed exercised (in the case of American Style Warrants (as more fully set out in Condition 21(A)(i).

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

**"Business Day"** means (a) a day (other than a Saturday or Sunday) (i) on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the relevant Business Day Centre(s) and, if the W&C Securities are Swedish Securities, in Stockholm and (ii) on which each Clearing System is open for business and (b) for the purposes of making payments in euro, a day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET2) System or any successor thereto is open.

**"Cash Settlement Amount"** means, in relation to a Cash Settled W&C Security, the amount (which may never be less than zero) which the Holder is entitled to receive on the Settlement Date in the Settlement Currency in relation to each such W&C Security, or, in the case of Warrants, if Units are specified in the applicable Final Terms, each Unit, as the case may be, as determined by the Calculation Agent pursuant to the provision set out in the applicable Final Terms. The Cash Settlement Amount will be rounded to the nearest two decimal places (or, in the case of Japanese Yen, the nearest whole unit) in the relevant Settlement Currency, 0.005 (or, in the case of Japanese Yen, half a unit) being rounded upwards, with W&C Securities exercised at the same time by the same Holder being aggregated for the purpose of determining the aggregate Cash Settlement Amounts payable in respect of such W&C Securities.

**"Clearing System"** means:

- (a) in respect of W&C Securities represented by a Euroclear/CBL Global W&C Security, Euroclear and/or Clearstream, Luxembourg;
- (b) in respect of W&C Securities represented by a CBF Global W&C Security, Clearstream, Frankfurt;
- (c) in respect of W&C Securities represented by a Euroclear France Global W&C Security, Euroclear France; or
- (d) in respect of Swedish Dematerialised Securities, the Swedish CSD.

**"Definitive Certificates"** has the meaning given in Condition 25.

**"Entitlement"** means, in relation to a Physical Delivery W&C Security (other than a Credit Linked Certificate), or, in the case of Warrants, if Units are specified in the applicable Final Terms, each Unit, as the case may be, the quantity of the Relevant Asset or the Relevant Assets, as the case may be, which a Holder is entitled to receive on the Settlement Date in respect of each such W&C Security or Unit, as the case may be, following payment of the Expenses, and, in the case of Warrants, the Exercise Price, rounded down as provided in Condition 21(C) or 28(A), as determined by the Calculation Agent including any documents evidencing such Entitlement.

**"Global W&C Security"** means (a) in the case of an issue of Warrants, the Permanent Global Warrant (as defined in Condition 19) representing such Warrants and (b) in the case of an issue of Certificates, the Global Certificate (as defined in Condition 26 representing such Certificates).

**"Settlement Date"** has the meaning given it in the applicable Final Terms.

**"Swedish CSD"** means a duly authorised Swedish central securities depository (in Swedish: *central värdepappersförvarare*) under the Swedish Financial Instruments Accounts Act (in Swedish: *lag (1998:1479) om kontoföring av finansiella instrument*) and designated as the Clearing System by the Issuer in the applicable Final Terms, which is expected to be VPC AB, Regeringsgatan 65, Box 7822, SE-103 97 Stockholm, Sweden.

**"Swedish CSD Rules"** means the Swedish Financial Instruments Accounts Act (in Swedish: *lag (1998:1479) om kontoföring av finansiella instrument*) and any regulations, rules and operating procedures applicable to and/or issued by the Swedish CSD from time to time.

**"Swedish Dematerialised Securities"** means (a) in the case of Warrants, Swedish Warrants (as defined in Condition 19)) or (b) in the case of Certificates, Swedish Dematerialised Certificates (as defined in Condition 26).

**"Swedish Register"** means the book entry register maintained by the Swedish CSD on behalf of the Issuer in respect of Swedish Dematerialised Securities in accordance with the Swedish CSD Rules.

**5. General provisions relating to Physical Settlement in respect of W&C Securities (other than Credit Linked Certificates)**

The provisions of Conditions 5(A), 5(B) and 5(C) apply to W&C Securities other than Credit Linked Certificates.

**(A) Settlement Disruption**

If, following the exercise of Physical Delivery W&C Securities, in the opinion of the Calculation Agent, delivery of the Entitlement using the method of delivery specified in the applicable Final Terms is not practicable by reason of a Settlement Disruption Event (as defined below) having occurred and continuing on any Settlement Date, then such Settlement Date for such W&C Securities shall be postponed to the first following Settlement Business Day in respect of which there is no such Settlement Disruption Event, provided that the Issuer may elect in its sole discretion to satisfy its obligations in respect of the relevant W&C Securities or Unit, as the case may be, by delivering the Entitlement using such other commercially reasonable manner as it may select and in such event the Settlement Date shall be such day as the Issuer deems appropriate in connection with delivery of the Entitlement in such other commercially reasonable manner. For the avoidance of doubt, where a Settlement Disruption Event affects some but not all of the Relevant Assets comprising the Entitlement, the Settlement Date for the Relevant Assets not affected by the Settlement Disruption Event will be the originally designated Settlement Date. In the case of Warrants, in the event that a Settlement Disruption Event will result in the delivery on a Settlement Date of some but not all of the Relevant Assets comprising the Entitlement, the Calculation Agent shall determine in its discretion the appropriate *pro rata* portion of the Exercise Price to be paid by the relevant Holder in respect of that partial settlement. For so long as delivery of the Entitlement is not practicable by reason of a Settlement Disruption Event, then in lieu of physical settlement and notwithstanding any other provision hereof, the Issuer may elect in its sole discretion to satisfy and discharge its obligations in respect of the relevant W&C Securities or Unit, as the case may be, by payment to the relevant Holder of the Disruption Cash Settlement Price (as defined below) on the third Business Day following the date that notice of such election is given to the Holders in accordance with Condition 10. The Calculation Agent shall give notice as soon as practicable to the Holders in accordance with Condition 10 that a Settlement Disruption Event has occurred provided that any failure to give, or non-receipt of, such notice will not affect the validity of any such Settlement Disruption Event. No Holder shall be entitled to any payment in respect of the relevant W&C Security or Unit, as the case may be, in the event of any delay in the delivery of the Entitlement due to the occurrence of a Settlement Disruption Event and no liability in respect thereof shall attach to the Issuer or the Guarantor.

For the purposes hereof:

**"Disruption Cash Settlement Price"** in respect of any relevant W&C Securities or Unit, as the case may be, shall be the fair market value of such W&C Securities or Unit, as the case may be, (taking into account, where the Settlement Disruption Event affected some but not all of the Relevant Assets comprising the Entitlement and such non-affected Relevant Assets have been duly delivered as provided above, the value of such Relevant Assets), less the cost to the Issuer and/or its Affiliates or agents of unwinding any underlying related hedging arrangements (including any cost of funding in respect of such hedging arrangements), all as determined by the Issuer in its sole and absolute discretion, plus, in the case of Warrants and if already paid, the Exercise Price (or, where as provided above some Relevant Assets have been delivered, and a *pro rata* portion thereof has been paid, such *pro rata* portion); and

**"Settlement Disruption Event"** means, in the opinion of the Calculation Agent, an event beyond the control of the Issuer as a result of which the Issuer cannot make delivery of the Relevant Asset(s) using the method specified in the applicable Final Terms.

(B) *Failure to Deliver due to Illiquidity*

If "Failure to Deliver due to Illiquidity" is specified as applicable in the applicable Final Terms and, following the exercise of Physical Delivery W&C Securities, in the opinion of the Calculation Agent, it is impossible or impracticable to deliver, when due, some or all of the Relevant Assets (the "Affected Relevant Assets") comprising the Entitlement, where such failure to deliver is due to illiquidity in the market for the Relevant Assets (a "Failure to Deliver due to Illiquidity"), then:

- (a) subject as provided elsewhere in the Conditions, any Relevant Assets which are not Affected Relevant Assets, will be delivered on the originally designated Settlement Date and, in the case of Warrants, the Calculation Agent shall determine in its discretion the appropriate *pro rata* portion of the Exercise Price to be paid by the relevant Holder in respect of that partial settlement; and
- (b) in respect of any Affected Relevant Assets, in lieu of physical settlement and notwithstanding any other provision hereof, the Issuer may elect in its sole discretion to satisfy its obligations in respect of the relevant W&C Securities or Unit, as the case may be, by payment to the relevant Holder of the Failure to Deliver Settlement Price (as defined below) on the fifth Business Day following the date that notice of such election is given to the Holders in accordance with Condition 10. The Calculation Agent shall give notice as soon as practicable to the Holders in accordance with Condition 10 that the provisions of this Condition 5(B) apply.

For the purposes hereof:

"Failure to Deliver Settlement Price" means, in respect of any relevant W&C Security or Unit, as the case may be, the fair market value of such W&C Security or Unit, as the case may be (taking into account, the Relevant Assets comprising the Entitlement which have been duly delivered as provided above), less the cost to the Issuer and/or its Affiliates or agents of unwinding any underlying related hedging arrangements, all as determined by the Issuer in its sole and absolute discretion, plus, in the case of Warrants and if already paid, the Exercise Price (or, where as provided above some Relevant Assets have been delivered, and a *pro rata* portion thereof has been paid, such *pro rata* portion).

(C) *Issuer's Option to Vary Settlement*

If the applicable Final Terms indicates that the Issuer has an option to vary settlement in respect of the W&C Securities, upon a valid exercise of W&C Securities in accordance with these Terms and Conditions, the Issuer may, at its sole and unfettered discretion, in respect of each such W&C Security or, Unit, as the case may be, elect not to pay the relevant Holders the Cash Settlement Amount or not to deliver or procure delivery of the Entitlement to the relevant Holders, as the case may be, but, *in lieu* thereof to deliver or procure delivery of the Entitlement or make payment of the Cash Settlement Amount on the Settlement Date to the relevant Holders, as the case may be. Notification of such election will be given to Holders no later than 10.00 a.m. (London time) on the second Business Day following the Actual Exercise Date.

6. **General provisions relating to Settlement**

None of the Issuer, the Guarantor, the Calculation Agent and the Security Agents shall have any responsibility for any errors or omissions in the calculation of any Cash Settlement Amount or of any Entitlement.

Exercise of the W&C Securities is subject to all applicable laws, regulations and practices in force on the relevant Exercise Date and none of the Issuer, the Guarantor or any of its Affiliates and the Security Agents shall incur any liability whatsoever if it is unable to effect the transactions contemplated, after using all reasonable efforts, as a result of any such laws, regulations or practices. None of the Issuer, the Guarantor or any of its Affiliates and the Security Agents shall under any circumstances be liable for any acts or defaults of Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt, Euroclear France or the Swedish CSD in relation to the performance of their duties in relation to the W&C Securities.

The purchase of W&C Securities does not confer on any holder of such W&C Securities any rights (whether in respect of voting, distributions or otherwise) attaching to any Relevant Asset.

**7. Illegality**

If the Issuer determines that (i) the performance of its obligations under the W&C Securities or that any arrangements made to hedge the Issuer's obligations under the W&C Securities or (ii) the performance by the Guarantor of its obligations under the Guarantee in respect of the W&C Securities, have become illegal in whole or in part for any reason, the Issuer may cancel the W&C Securities by giving notice to Holders in accordance with Condition 10.

Should any one or more of the provisions contained in these Terms and Conditions be or become invalid, the validity of the remaining provisions shall not in any way be affected thereby.

If the Issuer cancels the W&C Securities then the Issuer will, if and to the extent permitted by applicable law, pay an amount to each Holder in respect of each W&C Security or each Unit, as the case may be, held by such Holder, which amount shall be the fair market value of a W&C Security or Unit, as the case may be, notwithstanding such illegality less the cost to the Issuer and/or its Affiliates or agents of unwinding any underlying related hedging arrangements (including any cost of funding in respect of such hedging arrangements) plus, in the case of Warrants and if already paid by or on behalf of the Holder, the Exercise Price, all as determined by the Calculation Agent in its sole and absolute discretion. Payment will be made in such manner as shall be notified to the Holders in accordance with Condition 10.

**8. Purchases**

The Issuer, the Guarantor or any of their Affiliates may, but is not obliged to, at any time purchase W&C Securities at any price in the open market or by tender or private treaty. Any W&C Securities so purchased may be held or resold or surrendered for cancellation.

**9. Agents, Determinations, Modifications and Meeting Provisions**

**(A) Security Agents**

The specified offices of the Security Agents are as set out at the end of these Terms and Conditions.

The Issuer and the Guarantor reserve the right at any time to vary or terminate the appointment of any Security Agent and to appoint further or additional Security Agents, provided that no termination of appointment of the Principal Security Agent shall become effective until a replacement Principal Security Agent shall have been appointed and provided that, so long as any of the W&C Securities are listed on any stock exchange or admitted to trading or listing by any other relevant authority, there shall be a Security Agent having a specified office in each location required by the rules and regulations of the relevant stock exchange or other relevant authority and provided further that (i) so long as any of the W&C Securities are represented by a CBF Global W&C Security there shall be a Frankfurt Security Agent, (ii) so long as any of the W&C Securities are represented by a Euroclear France Global W&C Security there shall be a Paris Security Agent and (iii) so long as any of the W&C Securities are Swedish Securities there shall be a Swedish Security Agent, who, for so long as any of the Swedish Securities are Swedish Dematerialised Securities, shall be duly authorised as an account operator and issuing agent under the Swedish CSD Rules. Notice of any termination of appointment and of any changes in the specified office of any Security Agent will be given to Holders in accordance with Condition 10 provided that any failure to give, or non-receipt of, such notice will not affect the validity of any such termination or changes. In acting under the Agency Agreement, each Security Agent acts solely as agent of the Issuer and the Guarantor and does not assume any obligation or duty to, or any relationship of agency or trust for or with, the Holders and any Security Agent's determinations and calculations in respect of the W&C Securities shall (save in the case of manifest error) be final, conclusive and binding on the Issuer, the Guarantor and the Holders.

The Agency Agreement may be amended by the parties thereto, but without the consent of the Holders, for the purpose of curing any ambiguity or of curing, correcting or supplementing any

defective provision contained therein or in any manner which the parties may mutually deem necessary or desirable and which shall not be materially prejudicial to the interests of the Holders.

In the case of Swedish Dematerialised Securities, the Issuer has appointed the Swedish CSD. The Swedish CSD acts solely as agent of the Issuer and does not assume any obligation to, or relationship of agency and trust with, the Holders.

**(B) Calculation Agent**

In relation to each issue of W&C Securities, the Calculation Agent (whether it be Merrill Lynch International or another entity) acts solely as agent of the Issuer and the Guarantor and does not assume any obligation or duty to, or any relationship of agency or trust for or with, the Holders. All calculations and determinations made in respect of the W&C Securities by the Calculation Agent shall (save in the case of manifest error) be final, conclusive and binding on the Issuer, the Guarantor, the Security Agents and the Holders. The Calculation Agent shall promptly notify the Issuer and the Principal Security Agent upon any such calculations and determinations, and (in the absence of wilful default, bad faith or manifest error) no liability to the Issuer, the Guarantor, the Security Agents or the Holders shall attach to the Calculation Agent in connection with the exercise or non-exercise by it of its powers, duties and discretions pursuant to such provisions.

The Calculation Agent may, with the consent of the Issuer, delegate any of its obligations and functions to a suitably competent third party of good standing as it deems appropriate.

**(C) Determinations by the Issuer**

Any determination made by the Issuer pursuant to these Terms and Conditions shall (save in the case of manifest error) be final, conclusive and binding on the Security Agents and the Holders.

**(D) Modifications and Meetings Provisions**

The Issuer may modify these Terms and Conditions without the consent of the Holders in any manner which the Issuer may deem necessary or desirable provided that such modification is not materially prejudicial to the interests of the Holders or such modification is of a formal, minor or technical nature or to correct a manifest or proven error or to cure, correct or supplement any defective provision contained herein and/or therein. Notice of any such modification will be given to the Holders in accordance with Condition 10 but failure to give, or non-receipt of, such notice will not affect the validity of any such modification.

The Agency Agreement contains provisions for convening meetings of the Holders to consider any matter affecting their interests, including the sanctioning by Extraordinary Resolution of a modification of the Terms and Conditions of the W&C Securities or any of the provisions of the Agency Agreement. Such a meeting may be convened by the Issuer or the Guarantor and shall be convened by the Issuer if required in writing by the Holders holding not less than ten per cent. (by number) of the W&C Securities for the time being remaining unexercised. The quorum at any such meeting for passing an Extraordinary Resolution is one or more persons present and holding or representing in the aggregate not less than 50 per cent. (by number) of the W&C Securities for the time being unexercised, or at any adjourned meeting one or more persons present whatever the number of the W&C Securities so held or represented by them, except that at any meeting the business of which includes the modification of certain provisions of the Terms and Conditions of the W&C Securities (including modifying the Exercise Date, reducing or cancelling the Cash Settlement Amount or the Entitlement or the additional amount payable (if applicable) or altering the Cash Settlement Currency, the quorum shall be one or more persons present and holding or representing not less than two-thirds (by number) of the W&C Securities of the time being unexercised, or at any adjourned such meeting one or more persons present and holding or representing not less than one-third (by number) of the W&C Securities for the time being unexercised. An Extraordinary Resolution passed at any meeting of the Holders shall be binding on all Holders, whether or not they are present at the meeting.



## 10. Notices

In the case of W&C Securities represented by a Global W&C Security or Swedish Dematerialised Securities, all notices to Holders shall be valid: (i) if delivered (x) in the case of W&C Securities, which are not Swedish Dematerialised Securities, to each Clearing System, for communication by them to the Holders, or (y) in the case of Swedish Dematerialised Securities, by mail to the address registered for such Holder in the Swedish Register or otherwise in accordance with the rules and regulations of the Swedish CSD; and (ii) if and so long as the W&C Securities are admitted to trading on, and listed on any stock exchange or are admitted to trading by another relevant authority, in accordance with the rules and regulations of the relevant stock exchange or other relevant authority (in the case of Italian Listed Certificates such notices shall be published by Borsa Italiana S.p.A.).

If the W&C Securities are admitted to trading on the Luxembourg Stock Exchange's regulated market and listed on the Official List of the Luxembourg Stock Exchange, notices shall be published either in a daily newspaper with general circulation in Luxembourg (which is expected to be the *Luxembourger Wort* or *Tageblatt*) or on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)). If the W&C Securities are admitted to trading on Euronext Paris S.A. and so long as the rules of Euronext Paris S.A. so require, notices shall be published in a leading daily financial newspaper having general circulation in Paris (which is expected to be *Les Echos* or *La Tribune*) or if such newspapers cease to be published or timely publication in them shall not be practicable in such other financial daily newspaper having general circulation in Paris.

In the case of Definitive Certificates, notices to the Holders will be deemed to be validly given if: (i) in the case of Definitive Certificates other than Swedish Definitive Certificates, published in a leading English language daily newspaper of general circulation in London (it is expected that such publication will be made in the *Financial Times*), or (ii) in the case of Swedish Definitive Certificates, if published in a leading Swedish language daily newspaper of general circulation in Stockholm (it is expected that such publication will be made in *Svenska Dagbladet*).

Any such notice shall be deemed to have been given (i) in the case of W&C Securities which are not Swedish Dematerialised Securities, on the second Business Day following such publication or delivery or (ii) in the case of Swedish Dematerialised Securities, if sent by mail to the Holders, on the fourth weekday (being a day other than a Saturday or a Sunday) following the day on which the notice was sent by mail or, in each case if earlier, the date of such publication or, if published more than once, on the date of the first such publication.

## 11. Expenses and Taxation

- (a) A holder of W&C Securities must pay all taxes, duties and/or expenses, including any applicable depositary charges, transaction or exercise charges, stamp duty, stamp duty reserve tax, issue, registration, securities transfer and/or other taxes or duties arising from the exercise and settlement of such W&C Securities and/or, if applicable, the delivery of the Entitlement pursuant to the terms of such W&C Securities (together "Expenses").
- (b) The Issuer shall not be liable for or otherwise obliged to pay any tax, duty, withholding or other payment which may arise as a result of the ownership, transfer, exercise or enforcement of any W&C Security by any person and all payments made by the Issuer shall be made subject to any such tax, duty, withholding or other payment which may be required to be made, paid, withheld or deducted.

## 12. Further Issues

The Issuer shall be at liberty from time to time without the consent of Holders to create and issue further W&C Securities so as to be consolidated with and form a single series with the outstanding W&C Securities.

## 13. Substitution of the Issuer, Consolidation and Merger

### (A) Substitution of the Issuer

The Issuer, or any previous substituted company may, at any time, without the consent of the Holders, substitute for itself as principal obligor under the W&C Securities any company (the "Substitute") being the Guarantor or any of its other subsidiaries, subject to:

- (i) (except in the case of the substitution of the Guarantor), the W&C Securities being guaranteed by the Guarantor on the same terms, *mutatis mutandis*, as the W&C Securities;
- (ii) all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents) to ensure that the W&C Securities represent legal, valid and binding obligations of the Substitute having been taken, fulfilled and done and are in full force and effect;
- (iii) the Substitute shall have become party to the Agency Agreement, with any appropriate consequential amendments, as if it had been an original party to it;
- (iv) the Substitute and the Issuer shall have obtained legal opinions, from independent legal advisers of recognised standing in the country of incorporation of the Substitute, (if the Guarantor is not the Substitute) the States of Delaware and New York and England, that the obligations of the Substitute and (if the Guarantor is not the Substitute) the Guarantor are legal, valid and binding obligations, that all consents and approvals as aforesaid have been obtained;
- (v) the Issuer shall have given at least 30 days' prior notice of the date of such substitution to the Holders in accordance with Condition 10;
- (vi) each stock exchange or market on which the W&C Securities are listed or admitted to trading shall have confirmed that, following the proposed substitution by the Substitute, the W&C Securities will continue to be listed or admitted to trading on such stock exchange(s) or such market(s), as the case may be;
- (vii) if appropriate, the Substitute shall have appointed a process agent as its agent in England to receive service of process on its behalf in relation to any legal action or proceedings arising out of or in connection with the W&C Securities; and
- (viii) if the Securities are Swedish Dematerialised Securities, the Swedish CSD having given its consent to such substitution (such consent not to be unreasonably withheld or delayed).

**(B) Consolidation or Merger**

The Issuer or the Guarantor may consolidate with, or sell or convey all or substantially all of its assets to, or merge with or into any other company provided that in any such case, (a) in the case of the Issuer, either the Issuer shall be the continuing company, or the successor company shall expressly assume the due and punctual payment of all amounts or delivery of all assets, as the case may be, payable or deliverable, as applicable, with respect to the W&C Securities, according to their tenor, and the due and punctual performance and observance of all of the obligations under the Conditions to be performed by the Issuer by an amendment to the Agency Agreement executed by, *inter alios*, such successor company, the Guarantor and the Principal Security Agent, and (b) in the case of the Guarantor, the Guarantor shall be the continuing company, or the successor company shall be a company organised and existing under the laws of the United States of America or a state thereof and such successor company shall expressly assume the due and punctual payment of all amounts or delivery of all assets, as the case may be, payable or deliverable, as applicable, with respect to the Guarantee by the execution of a new guarantee of like tenor. In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor company, such successor company shall succeed to and be substituted for the Issuer or the Guarantor, as the case may be, with the same effect as if it had been named herein as the Issuer or the Guarantor, as the case may be, and the Issuer or the Guarantor, as the case may be, except in the event of a conveyance by way of lease, shall be relieved of any further obligations under the Conditions, the Agency Agreement and the Guarantee, as applicable.

**14. Governing Law and Submission to Jurisdiction**

**(A) Governing law**

The W&C Securities, Global W&C Securities, Definitive Certificates and the Agency Agreement and any non-contractual obligations arising out of the W&C Securities, Global W&C Securities, Definitive Certificates and the Agency Agreement shall be governed by and construed in accordance, with English law.

The Guarantee is governed by, and shall be construed in accordance with, New York law.

For greater certainty, Luxembourg law shall not apply, including Articles 86 to 94-8 of the Luxembourg law on commercial companies of 10th August, 1915, as amended, which are specifically are excluded.

*(B) Submission to jurisdiction*

In relation to any legal action or proceedings arising out of or in connection with the W&C Securities and the Global W&C Securities ("**Proceedings**"), the courts of England have exclusive jurisdiction and the Issuer and the Holders submit to the exclusive jurisdiction of the English courts. The Issuer and the Holders waive any objection to Proceedings in the English courts on the grounds of venue or that the Proceedings have been brought in an inconvenient forum.

For greater certainty, the Guarantor has not submitted to the jurisdiction of the English courts in the Guarantee, and claims under the Guarantee are required to be instituted in a federal or state court in the Borough of Manhattan in the City and State of New York.

*(C) Appointment of Process Agent*

The Issuer hereby appoints Merrill Lynch Corporate Services Limited, currently at Merrill Lynch Financial Centre, 2 King Edward Street, London EC1A 1HQ as its agent in England to receive service of process in any Proceedings in England. If for any reason such process agent ceases to act as such or no longer has an address in England, the Issuer agrees to appoint a substitute process agent and to notify the Holders of such appointment. Nothing herein shall affect the right to serve process in any other manner permitted by law.

**15. Adjustments for European Monetary Union**

The Issuer may, without the consent of the Holders, on giving notice to the Holders in accordance with Condition 10:

- (i) elect that, with effect from the Adjustment Date specified in the notice, certain terms of the W&C Securities shall be redenominated in euro.

The election will have effect as follows:

- (a) where the Settlement Currency of the W&C Securities is the National Currency Unit of a country which is participating in the third stage of European Economic and Monetary Union, such Settlement Currency shall be deemed to be an amount of euro converted from the original Settlement Currency into euro at the Established Rate, subject to such provisions (if any) as to rounding as the Calculation Agent may decide and as may be specified in the notice, and after the Adjustment Date, all payments of the Cash Settlement Amount in respect of the W&C Securities will be made solely in euro as though references in the W&C Securities to the Settlement Currency were to euro;
- (b) where the Exchange Rate and/or any other terms of these Terms and Conditions are expressed in or, in the case of the Exchange Rate, contemplate the exchange from or into, the currency (the "**Original Currency**") of a country which is participating in the third stage of European Economic and Monetary Union, such Exchange Rate and/or any other terms of these Terms and Conditions shall be deemed to be expressed in or, in the case of the Exchange Rate, converted for or, as the case may be into, euro at the Established Rate; and
- (c) such other changes shall be made to these Terms and Conditions as the Issuer may decide, in its sole and absolute discretion to conform them to conventions then applicable to instruments expressed in euro; and/or

- (ii) require that the Calculation Agent make such adjustments to the Multiplier and/or, in the case of Warrants, the Exercise Price and/or any other terms of these Terms and Conditions and/or the applicable Final Terms as the Calculation Agent, in its sole discretion, may determine to be appropriate to account for the effect of the third stage of European Economic and Monetary Union on the Multiplier and/or, in the case of Warrants, the Exercise Price and/or such other terms of these Terms and Conditions.

Notwithstanding the foregoing, neither the Issuer, any of its Affiliates or agents, the Calculation Agent nor any Security Agent shall be liable to any Holder or other person for any commissions, costs, losses or expenses in relation to or resulting from the transfer of euro or any currency conversion or rounding effected in connection therewith.

In this Condition, the following expressions have the following meanings:

**"Adjustment Date"** means a date specified by the Issuer in the notice given to the Holders pursuant to this Condition which falls on or after the date on which the country of the Original Currency first participates in the third stage of European Economic and Monetary Union pursuant to the Treaty;

**"Established Rate"** means the rate for the conversion of the Original Currency (including compliance with rules relating to rounding in accordance with applicable European Community regulations) into euro established by the Council of the European Union pursuant to first sentence of Article 1091(4) of the Treaty;

**"euro"** means the currency introduced at the start of the third stage of European Economic and Monetary Union pursuant to the Treaty;

**"National Currency Unit"** means the unit of the currency of a country, as those units are defined on the date on which the country of the Original Currency first participates in European Economic and Monetary Union; and

**"Treaty"** means the treaty establishing the European Community, as amended.

**16. Contracts (Rights of Third Parties) Act 1999**

The W&C Securities do not confer on any third party any rights under the Contracts (Rights of Third Parties) Act 1999 (the "Act") to enforce any term of the W&C Securities, but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

**17. Terms applicable to Warrants only**

Conditions 18, 19, 20, 21, 22 and 23 apply to Warrants only.

**18. Definitions (Warrants)**

For the purposes of the Warrants:

**"Exercise Business Day"** means a day that is a Business Day and, in the case of an Index Linked Warrant or Share Linked Warrant, a Scheduled Trading Day; and

**"In-The-Money"** means:

- (a) in the case of a Cash Settled Warrant, the Cash Settlement Amount in respect of such Warrant is greater than zero; and
- (b) in the case of a Physical Delivery Warrant, the value of the Entitlement on the Actual Exercise Date for such Warrant is greater than the Exercise Price as determined by the Calculation Agent.

**19. Form of Warrants**

If the applicable Final Terms indicate that such Warrants are not eligible for sale in the United States or to, or for the account or benefit of, U.S. persons pursuant to an exemption from the registration requirements of the Securities Act and are to be issued into and transferred through accounts at Euroclear Bank S.A./N.V. ("Euroclear") and Clearstream Banking, *société anonyme* ("Clearstream, Luxembourg"), such series of Warrants will on issue be constituted by a permanent global warrant

(the "**Euroclear/CBL Global Warrant**"), which will be deposited with a depositary common to Euroclear and Clearstream, Luxembourg.

If the applicable Final Terms indicate that such Warrants are not eligible for sale in the United States or to, or for the account or benefit of, U.S. persons pursuant to an exemption from the registration requirements of the Securities Act and are to be issued into and transferred through accounts at Clearstream Banking AG, Frankfurt am Main ("**Clearstream, Frankfurt**"), such series of Warrants will on issue be constituted by a permanent global warrant (the "**CBF Global Warrant**"), which will be deposited with Clearstream, Frankfurt.

If the applicable Final Terms indicate that such Warrants are not eligible for sale in the United States or to, or for the account or benefit of, U.S. persons pursuant to an exemption from the registration requirements of the Securities Act and are to be issued into and transferred through accounts at Euroclear France S.A. ("**Euroclear France**"), such series of Warrants will on issue be constituted by a permanent global warrant (the "**Euroclear France Global Warrant**"), which will be deposited with Euroclear France.

The Euroclear/CBL Global Warrant, the CBF Global Warrant and the Euroclear France Global Warrant are each referred to herein as a "**Permanent Global Warrant**".

If the Warrants are Swedish Warrants ("**Swedish Warrants**") and the applicable Final Terms indicate that such Warrants are not eligible for sale in the United States or to, or for the account or benefit of, U.S. persons pursuant to an exemption from the registration requirements of the Securities Act and are to be issued into and cleared through the Swedish CSD, such series of Warrants will be issued in dematerialised and uncertificated book entry form in accordance with the Swedish Financial Instruments Accounts Act (in Swedish: *lag (1998: 1479) om kontoföring av finansiella instrument*).

## **20. Type (Warrants)**

The applicable Final Terms will indicate whether the Warrants are American style Warrants ("**American Style Warrants**") or European style Warrants ("**European Style Warrants**") or such other type as may be specified in the applicable Final Terms and whether automatic exercise ("**Automatic Exercise**") applies to the Warrants, whether the Warrants are call Warrants ("**Call Warrants**") or put Warrants ("**Put Warrants**"), or such other type as may be specified in the applicable Final Terms and whether the Warrants may only be exercised in Units. If Units are specified in the applicable Final Terms, Warrants must be exercised in Units and any Exercise Notice which purports to exercise Warrants in breach of this provision shall be void and of no effect.

If the Warrants are Swedish Warrants they will be European Style Warrants, Cash Settled W&C Securities and Automatic Exercise will apply.

## **21. Exercise Rights (Warrants)**

### **(A) Exercise Period**

#### **(a) American Style Warrants**

American Style Warrants are exercisable on any Exercise Business Day during the Exercise Period.

If Automatic Exercise is not specified in the applicable Final Terms, in the case of Warrants represented by a Permanent Global Warrant, any such American Style Warrant with respect to which no Exercise Notice (as defined below) has been delivered in the manner set out in Condition 22, at or prior to 10.00 a.m., Brussels, Luxembourg, Frankfurt or Paris time, as the case may be, on the last Exercise Business Day of the Exercise Period (the "**Expiration Date**"), shall become void.

If Automatic Exercise is specified in the applicable Final Terms, in the case of Warrants represented by a Permanent Global Warrant, any such American Style Warrant with respect to which no Exercise Notice has been delivered in the manner set out in Condition 22, at or prior to 10.00 a.m., Brussels, Luxembourg, Frankfurt or Paris time, as the case may be, on the Expiration Date and which is in the determination of the Calculation Agent "In-The-Money" shall be automatically exercised on the Expiration Date and the provisions of Condition 22(E) shall apply.

In the case of Warrants represented by a Permanent Global Warrant, the Exercise Business Day during the Exercise Period on which an Exercise Notice is delivered prior to 10.00 a.m., Brussels, Luxembourg, Frankfurt or Paris time (as appropriate), to Euroclear or Clearstream, Luxembourg or the Frankfurt Warrant Agent or the Paris Security Agent, as the case may be, and, a copy thereof is delivered to Merrill Lynch International and the Principal Warrant Agent, in each case as provided in Condition 22, or, if Automatic Exercise is specified in the applicable Final Terms and the Warrants are automatically exercised on the Expiration Date as provided above, the Expiration Date, is referred to herein as the "Actual Exercise Date". If any such Exercise Notice is received by Euroclear or Clearstream, Luxembourg or the Frankfurt Warrant Agent or the Paris Security Agent, as the case may be, or if a copy thereof is delivered to Merrill Lynch International and the Principal Warrant Agent, in each case, after 10.00 a.m., Brussels, Luxembourg, Frankfurt or Paris time (as appropriate), on any Exercise Business Day during the Exercise Period, such Exercise Notice will be deemed to have been delivered on the next Exercise Business Day, which Exercise Business Day shall be deemed to be the Actual Exercise Date, provided that any such Warrant in respect of which no Exercise Notice has been delivered in the manner set out in Condition 22 at or prior to 10.00 a.m. Brussels, Luxembourg, Frankfurt or Paris time (as appropriate) on the Expiration Date shall (i) if Automatic Exercise is not specified in the applicable Final Terms, become void or (ii) if Automatic Exercise is specified in the applicable Final Terms, be automatically exercised on the Expiration Date as provided above.

The expressions "exercise", "due exercise" and related expressions shall be construed to apply to any Warrants which are automatically exercised on the Expiration Date in accordance with this provision.

**(b) European Style Warrants**

European Style Warrants are only exercisable on the Exercise Date.

In the case of Warrants represented by a Permanent Global Warrant, if Automatic Exercise is not specified in the applicable Final Terms, any European Style Warrant with respect to which no Exercise Notice has been delivered in the manner set out in Condition 22, at or prior to 10.00 a.m., Brussels, Luxembourg, Frankfurt or Paris time (as appropriate) on the Actual Exercise Date, shall become void. If Automatic Exercise is specified in the applicable Final Terms, any such European Style Warrant with respect to which no Exercise Notice has been delivered in the manner set out in Condition 22, at or prior to 10.00 a.m., Brussels, Luxembourg, Frankfurt or Paris time, as the case may be, on the Actual Exercise Date and which is in the determination of the Calculation Agent "In-The-Money", shall be automatically exercised on the Actual Exercise Date and the provisions of Condition 22(E) shall apply.

In the case of Swedish Warrants, if any such Warrant is in the determination of the Calculation Agent "In-The-Money" on the Actual Exercise Date, such Warrant shall be automatically exercised on the Actual Exercise Date.

The expressions "exercise", "due exercise" and related expressions shall be construed to apply to any Warrants which are automatically exercised on the Actual Exercise Date in accordance with this provision.

**(B) Cash Settlement**

In the case of Warrants which are Cash Settled Warrants, each such Warrant or, if Units are specified in the applicable Final Terms, each Unit, entitles its holder, upon due exercise and subject to certification as to non-U.S. beneficial ownership to receive from the Issuer on the Settlement Date the Cash Settlement Amount.

**(C) Physical Settlement**

If the Warrants are Physical Delivery Warrants, each such Warrant or, if Units are specified in the applicable Final Terms, each Unit, as the case may be, entitles its holder, upon due exercise and, subject to certification as to non-U.S. beneficial ownership, to receive from the Issuer on the Settlement Date the Entitlement subject to payment of the relevant Exercise Price, if any, and any

other Expenses or sums payable. The method of delivery of the Entitlement is set out in the applicable Final Terms.

Unless otherwise specified in the applicable Final Terms, Warrants or Units, as the case may be, exercised at the same time by the same Holder will be aggregated for the purpose of determining the aggregate Entitlements in respect of such Warrants or Units, as the case may be, provided that the aggregate Entitlements in respect of the same Holder will be rounded down to the nearest whole unit of the Relevant Asset or each of the Relevant Assets, as the case may be, in such manner as the Calculation Agent shall determine. Therefore, fractions of the Relevant Asset or of each of the Relevant Assets, as the case may be, will not be delivered and in lieu thereof a cash adjustment calculated by the Calculation Agent in its sole and absolute discretion shall be paid to the Holder.

Following exercise of a Share Linked Warrant which is a Physical Delivery Warrant, all dividends on the relevant Shares to be delivered will be payable to the party that would receive such dividend according to market practice for a sale of the Shares executed on the relevant Actual Exercise Date and to be delivered in the same manner as such relevant Shares. Any such dividends to be paid to a Holder will be paid to the account specified by the Holder in the relevant Exercise Notice as referred to in Condition 22(4)(a)(2)(vi), Condition 22(4)(b)(2)(iv) or Condition 22(4)(c)(2)(iv), as applicable.

All references in this Condition to "Brussels, Luxembourg, Frankfurt or Paris time" shall, where W&C Securities are cleared through an additional or alternative clearing system other than the Swedish CSD, be deemed to refer as appropriate to the time in the city where the relevant clearing system is located.

**(D) Issuer Call Option**

If Issuer Call Option is specified as applicable in the applicable Final Terms, the Issuer may having given not less than 10 nor more than 60 days' notice (or such other Issuer Call Option Notice Period as is set out in the applicable Final Terms) to the Holders in accordance with Condition 10 (which notice shall be irrevocable) elect that all (but not some only) of the Warrants will be automatically exercised on the Call Option Date. If Call Option Cash Settlement is specified as applicable in the applicable Final Terms, notwithstanding any provision to the contrary in the Terms and Conditions and/or the applicable Final Terms (a) if the Warrants are not Cash Settled Warrants, the Warrants shall be deemed to be Cash Settled Warrants and (b) the Cash Settlement Amount shall be the Call Option Cash Settlement Amount specified in the applicable Final Terms.

If the Warrants are automatically exercised on the Call Option Date, (i) the Call Option Date shall be deemed to be the Expiration Date (in the case of American Style Warrants) or the Exercise Date (in the case of European Style Warrants), (ii) except in the case of Swedish Warrants, the provisions of Condition 22(E) shall apply, (iii) the provisions of Conditions 22(C) shall apply and (iv) the expressions "exercise", "due exercise" and related expressions shall be construed to apply to any Warrants which are automatically exercised on the Call Option Date in accordance with this provision.

**(E) Mandatory Early Exercise**

If Mandatory Early Exercise is specified as applicable in the applicable Final Terms and a Mandatory Early Exercise Event occurs, all (but not some only) of the Warrants will be automatically exercised on the Mandatory Early Exercise Date. If Mandatory Early Exercise Cash Settlement is specified as applicable in the applicable Final Terms, notwithstanding any provision to the contrary in the Terms and Conditions and/or the applicable Final Terms (a) if the Warrants are not Cash Settled Warrants, the Warrants shall be deemed to be Cash Settled Warrants and (b) the Cash Settlement Amount shall be the Mandatory Early Exercise Cash Settlement Amount specified in the applicable Final Terms.

If the Warrants are automatically exercised on the Mandatory Early Exercise Date, (i) the Mandatory Early Exercise Date shall be deemed to be the Expiration Date (in the case of American Style Warrants) or the Exercise Date (in the case of European Style Warrants), (ii) except in the case of Swedish Warrants, the provisions of Condition 22(E) shall apply, (iii) the provisions of Conditions

22(C) shall apply and (iv) the expressions "exercise", "due exercise" and related expressions shall be construed to apply to any Warrants which are automatically exercised on the Mandatory Early Exercise Date in accordance with this provision.

## **22. Exercise Procedure (Warrants)**

### **(A) Exercise Notices**

#### **(a) Warrants represented by a Euroclear/CBL Global Warrant**

Subject as provided in Condition 22(E), Warrants represented by a Euroclear/CBL Global Warrant may only be exercised by the delivery, or the sending by fax or authenticated SWIFT message (confirmed in writing), of a duly completed exercise notice (an "Exercise Notice") in the form set out in the Agency Agreement (copies of which form may be obtained from Euroclear, Clearstream, Luxembourg and the relevant Security Agents) to Euroclear or Clearstream, Luxembourg, as the case may be, with a copy to Merrill Lynch International and the Principal Warrant Agent in accordance with the provisions of Condition 21 and this Condition.

#### **(1) In the case of Cash Settled Warrants, the Exercise Notice shall:**

- (i)** specify the series of the Warrants and the number of Warrants being exercised and, if Units are specified in the applicable Final Terms, the number of Units being exercised;
- (ii)** specify the number of the Holder's account at Euroclear or Clearstream, Luxembourg, as the case may be, to be debited with the Warrants being exercised;
- (iii)** irrevocably instruct Euroclear or Clearstream, Luxembourg, as the case may be, to debit on or before the Settlement Date the Holder's account with the Warrants being exercised;
- (iv)** specify the number of the Holder's account at Euroclear or Clearstream, Luxembourg, as the case may be, to be credited with the Cash Settlement Amount (if any) for each Warrant or Unit, as the case may be, being exercised;
- (v)** include an undertaking to pay all Expenses and an authority to Euroclear or Clearstream, Luxembourg to deduct an amount in respect thereof from any Cash Settlement Amount due to such Holder and/or to debit a specified account of the Holder at Euroclear or Clearstream, Luxembourg, as the case may be, in respect thereof and to pay such Expenses;
- (vi)** certify that the beneficial owner of each Warrant being exercised is not a U.S. person (as defined in the Exercise Notice), such Warrants were not held on behalf of a U.S. person and no cash, securities or other property has been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with such exercise and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms; and
- (vii)** authorise the production of such certification in applicable administrative or legal proceedings,

all as provided in the Agency Agreement.

#### **(2) In the case of Physical Delivery Warrants, the Exercise Notice shall:**

- (i)** specify the series of the Warrants and the number of Warrants being exercised and, if Units are specified in the applicable Final Terms, the number of Units being exercised;
- (ii)** specify the number of the Holder's account at Euroclear Clearstream, Luxembourg, as the case may be, to be debited with the Warrants being exercised;



- (iii) irrevocably instruct Euroclear or Clearstream, Luxembourg, as the case may be, to debit on or before the Settlement Date the Holder's account with the Warrants being exercised;
- (iv) irrevocably instruct Euroclear or Clearstream, Luxembourg, to debit on the Actual Exercise Date a specified account of the Holder with Euroclear or Clearstream, Luxembourg, as the case may be, with the aggregate Exercise Prices in respect of such Warrants or Units, as the case may be, (together with any other amounts payable);
- (v) include an undertaking to pay all Expenses and an authority to Euroclear or Clearstream, Luxembourg to debit a specified account of the Holder at Euroclear or Clearstream, Luxembourg, as the case may be, in respect thereof and to pay such Expenses;
- (vi) include such details as are required by the applicable Final Terms for delivery of the Entitlement which may include account details and/or the name and address of any person(s) into whose name evidence of the Entitlement is to be registered and/or any bank, broker or agent to whom documents evidencing the Entitlement are to be delivered and specify the name and the number of the Holder's account with Euroclear or Clearstream, Luxembourg, as the case may be, to be credited with any cash payable by the Issuer, either in respect of any cash amount constituting the Entitlement or any dividends relating to the Entitlement or as a result of the occurrence of a Settlement Disruption Event and the Issuer electing to pay the Disruption Cash Settlement Price or the occurrence of a Failure to Deliver due to Illiquidity and the Issuer electing to pay the Failure to Deliver Settlement Price;
- (vii) in the case of FX Linked Warrants only, specify the number of the Holder's account at Euroclear or Clearstream, Luxembourg, as the case may be, to be credited with the amount due upon exercise of the Warrants;
- (viii) certify, *inter alia*, that the beneficial owner of each Warrant being exercised is not a U.S. person (as defined in the Exercise Notice), such Warrants were not held on behalf of a U.S. person and no cash, securities or other property has been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with such exercise and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms; and
- (ix) authorise the production of such certification in any applicable administrative or legal proceedings,

all as provided in the Agency Agreement.

- (3) If Condition 5(C) applies, the form of Exercise Notice required to be delivered will be different from that set out above. Copies of such Exercise Notice may be obtained from Euroclear, Clearstream, Luxembourg and the relevant Security Agents.

(b) Warrants represented by a CBF Global Warrant

Subject as provided in Condition 22(E), Warrants represented by a CBF Global Warrant may only be exercised by the delivery or the sending by facsimile (confirmed in writing) of a duly completed exercise notice (an "Exercise Notice") in the form set out in the Agency Agreement (copies of which form may be obtained from the relevant Security Agents) to the Frankfurt Warrant Agent with a copy to Merrill Lynch International and the Principal Warrant Agent in accordance with the provisions of Condition 21 and this Condition. The relevant Holder must also transfer to the Frankfurt Warrant Agent the Warrants to which such Exercise Notice relates and failure to transfer such Warrants at or prior to the time such Exercise Notice is delivered shall render such Exercise Notice null and void.

- (1) In the case of Cash Settled Warrants, the Exercise Notice shall:
- (i) specify the series of the Warrants and the number of Warrants being exercised and, if Units are specified in the applicable Final Terms, the number of Units being exercised;
  - (ii) specify the name and number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency to be credited with the Cash Settlement Amount (if any) for each Warrant or Unit, as the case may be, being exercised;
  - (iii) include an undertaking to pay all Expenses;
  - (iv) certify, *inter alia*, that the beneficial owner of each Warrant being exercised is not a U.S. person (as defined in the Exercise Notice), such Warrants were not held on behalf of a U.S. person and no cash, securities or other property has been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with such exercise and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms; and
  - (v) authorise the production of such certification in applicable administrative or legal proceedings,
- all as provided in the Agency Agreement.
- (2) In the case of Physical Delivery Warrants, the Exercise Notice shall:
- (i) specify the series of the Warrants and the number of Warrants being exercised and, if Units are specified in the applicable Final Terms, the number of Units being exercised;
  - (ii) include an undertaking to pay the aggregate Exercise Prices in respect of such Warrants or Units, as the case may be, (together with any other amounts payable);
  - (iii) include an undertaking to pay all Expenses;
  - (iv) include such details as are required by the applicable Final Terms for delivery of the Entitlement which may include account details and/or the name and address of any person(s) into whose name evidence of the Entitlement is to be registered and/or any bank, broker or agent to whom documents evidencing the Entitlement are to be delivered and specify the name and the number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency to be credited with any cash payable by the Issuer, either in respect of any cash amount constituting the Entitlement or any dividends relating to the Entitlement or as a result of the occurrence of a Settlement Disruption Event and the Issuer electing to pay the Disruption Cash Settlement Price or the occurrence of a Failure to Deliver due to Illiquidity and the Issuer electing to pay the Failure to Deliver Settlement Price;
  - (v) in the case of FX Linked Warrants only, specify the number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency to be credited with the amount due upon exercise of the Warrants;
  - (vi) certify, *inter alia*, that the beneficial owner of each Warrant being exercised is not a U.S. person (as defined in the Exercise Notice), such Warrants were not held on behalf of a U.S. person and no cash, securities or other property has been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with such exercise and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms; and
  - (vii) authorise the production of such certification in any applicable administrative or legal proceedings,

all as provided in the Agency Agreement.

- (3) If Condition 5(C) applies, the form of Exercise Notice required to be delivered will be different from that set out above. Copies of such Exercise Notice may be obtained from the relevant Security Agents.

(c) Warrants represented by a Euroclear France Global Warrant

Subject as provided in Condition 22(E), Warrants represented by a Euroclear France Global Warrant may only be exercised by the delivery or the sending by facsimile (confirmed in writing) of a duly completed exercise notice (an "Exercise Notice") in the form set out in the Agency Agreement (copies of which form may be obtained from the relevant Security Agents) to the Paris Security Agent with a copy to Merrill Lynch International and the Principal Warrant Agent in accordance with the provisions of Condition 21 and this Condition. The relevant Holder must also transfer to the Paris Security Agent the Warrants to which such Exercise Notice relates and failure to transfer such Warrants at or prior to the time such Exercise Notice is delivered shall render such Exercise Notice null and void.

- (1) In the case of Cash Settled Warrants, the Exercise Notice shall:

- (i) specify the series of the Warrants and the number of Warrants being exercised and, if Units are specified in the applicable Final Terms, the number of Units being exercised;
- (ii) specify the name and number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency or the number of the Holder's account at Euroclear France, as the case may be, to be credited with the Cash Settlement Amount (if any) for each Warrant or Unit, as the case may be, being exercised;
- (iii) include an undertaking to pay all Expenses;
- (iv) certify, *inter alia*, that the beneficial owner of each Warrant being exercised is not a U.S. person (as defined in the Exercise Notice), such Warrants were not held on behalf of a U.S. person and no cash, securities or other property has been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with such exercise and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms; and
- (v) authorise the production of such certification in applicable administrative or legal proceedings,

all as provided in the Agency Agreement.

- (2) In the case of Physical Delivery Warrants, the Exercise Notice shall:

- (i) specify the series of the Warrants and the number of Warrants being exercised and, if Units are specified in the applicable Final Terms, the number of Units being exercised;
- (ii) include an undertaking to pay the aggregate Exercise Prices in respect of such Warrants or Units, as the case may be, (together with any other amounts payable);
- (iii) include an undertaking to pay all Expenses;
- (iv) include such details as are required by the applicable Final Terms for delivery of the Entitlement which may include account details and/or the name and address of any person(s) into whose name evidence of the Entitlement is to be registered and/or any bank, broker or agent to whom documents evidencing the Entitlement are to be delivered and specify the name and the number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency or the number of the Holder's account at Euroclear France, as the case may be, to be credited with any cash payable by the Issuer, either in respect of any cash amount constituting the

Entitlement or any dividends relating to the Entitlement or as a result of the occurrence of a Settlement Disruption Event and the Issuer electing to pay the Disruption Cash Settlement Price or the occurrence of a Failure to Deliver due to Illiquidity and the Issuer electing to pay the Failure to Deliver Settlement Price;

- (v) in the case of FX Linked Warrants only, specify the number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency or the number of the Holder's account at Euroclear France, as the case may be, to be credited with the amount due upon exercise of the Warrants; and
- (vi) certify, *inter alia*, that the beneficial owner of each Warrant being exercised is not a U.S. person (as defined in the Exercise Notice), such Warrants were not held on behalf of a U.S. person and no cash, securities or other property has been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with such exercise and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms; and
- (vii) authorise the production of such certification in any applicable administrative or legal proceedings,

all as provided in the Agency Agreement.

- (3) If Condition 5(C) applies, the form of Exercise Notice required to be delivered will be different from that set out above. Copies of such Exercise Notice may be obtained from the relevant Security Agents.

(d) Irrevocable Election

Delivery of an Exercise Notice shall constitute an irrevocable election by the relevant Holder to exercise the Warrants specified. After the delivery of such Exercise Notice, such exercising Holder may not transfer such Warrants.

(B) *Verification of the Holder*

In the case of Warrants represented by a Euroclear/CBL Global Warrant, upon receipt of an Exercise Notice, Euroclear or Clearstream, Luxembourg, as the case may be, shall verify that the person exercising the Warrants is the holder thereof according to the books of Euroclear or Clearstream, Luxembourg, as the case may be. Subject thereto, Euroclear or Clearstream, Luxembourg, as the case may be, will confirm to the Principal Warrant Agent, the series and the number of Warrants being exercised and the account details, if applicable, for the payment of the Cash Settlement Amount or, as the case may be, the details for the delivery of the Entitlement in respect of each Warrant or Unit, as the case may be, being exercised. Upon receipt of such confirmation, the Principal Warrant Agent will inform the Issuer thereof. Euroclear or Clearstream, Luxembourg, as the case may be, will on or before the Settlement Date debit the account of the relevant Holder with the Warrants being exercised. If the Warrants are American Style Warrants, upon exercise of less than all the Warrants constituted by the Euroclear/CBL Global Warrant, the Common Depositary will, on the instructions of, and on behalf of, the Principal Warrant Agent, note such exercise on the Schedule to such Euroclear/CBL Global Warrant and the number of Warrants so constituted shall be reduced by the cancellation *pro tanto* of the Warrants so exercised.

In the case of a CBF Global Warrant upon receipt of an Exercise Notice and the relevant Warrants the Frankfurt Warrant Agent shall verify that the person delivering the Exercise Notice, prior to such transfer was the holder according to the records of Clearstream, Frankfurt. Subject thereto, the Frankfurt Warrant Agent shall notify the Issuer of the series number and the number of Warrants being exercised and the account details, if applicable, for the payment of the Cash Settlement Amount or, as the case may be, the details for the delivery of the Entitlement in respect of each Warrant or Unit, as the case may be, being exercised. Upon receipt of such confirmation, the Frankfurt Warrant Agent will inform the Issuer thereof. If the Warrants are American Style Warrants, upon exercise of less than all the Warrants constituted by the CBF Global Warrant, it will, on the

instructions of, and on behalf of, the Principal Warrant Agent, note such exercise on the Schedule to such CBF Global Warrant and the number of Warrants so constituted shall be reduced by the cancellation *pro tanto* of the Warrants so exercised.

In the case of a Euroclear France Global Warrant upon receipt of an Exercise Notice and the relevant Warrants, the Paris Security Agent shall verify that the person delivering the Exercise Notice, prior to such transfer was the holder according to the records of Euroclear France. Subject thereto, the Paris Security Agent shall notify the Issuer of the series number and the number of Warrants being exercised and the account details, if applicable, for the payment of the Cash Settlement Amount or, as the case may be, the details for the delivery of the Entitlement in respect of each Warrant or Unit, as the case may be, being exercised. Upon receipt of such confirmation, the Paris Security Agent will inform the Issuer thereof. If the Warrants are American Style Warrants, upon exercise of less than all the Warrants constituted by the Euroclear France Global Warrant, it will, on the instructions of, and on behalf of, the Principal Warrant Agent, note such exercise on the Schedule to such Euroclear France Global Warrant and the number of Warrants so constituted shall be reduced by the cancellation *pro tanto* of the Warrants so exercised.

(C) *Settlement*

(a) Cash Settled Warrants

In the case of Warrants represented by a Permanent Global Warrant the Issuer or failing the Issuer, the Guarantor, through the relevant Security Agent, shall on the Settlement Date pay or cause to be paid the Cash Settlement Amount (if any) for each duly exercised Warrant or Unit, as the case may be, to the Holder's account specified in the relevant Exercise Notice for value on the Settlement Date less any Expenses not already paid.

In the case of Swedish Warrants, payment of the Cash Settlement Amount (if any) less Expenses will be made to the persons registered as Holders in the Swedish Register on the fifth Business Day prior to the Settlement Date (the "**Record Date**"). The Swedish Security Agent will pay the Cash Settlement Amount through the Swedish CSD to each Holder appearing in the Swedish Register on the Record Date on the Settlement Date.

Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment.

(b) Physical Delivery Warrants

Subject to payment of the aggregate Exercise Prices, if any, and payment of any Expenses with regard to the relevant Warrants or Units, as the case may be, the Issuer shall on the Settlement Date deliver, or procure the delivery of, the Entitlement for each duly exercised Warrant or Unit, as the case may be, pursuant to the details specified in the Exercise Notice subject as provided in Condition 21(C). The Entitlement shall be delivered and evidenced in such manner as set out in the applicable Final Terms.

(D) *Determinations*

Any determination as to whether an Exercise Notice is duly completed and in proper form shall, in the case of Warrants represented by a Permanent Global Warrant, be made by the Principal Warrant Agent, or, in the case of Warrants represented by a Euroclear/CBL Global Warrant, Euroclear or Clearstream, Luxembourg, as the case may be, in consultation with the Principal Warrant Agent, and shall be conclusive and binding on the Issuer, the relevant Security Agents and the relevant Holder. Subject as set out below, any Exercise Notice so determined to be incomplete or not in proper form, or which is not copied to the Principal Warrant Agent and Merrill Lynch International immediately after being delivered or sent to Euroclear and/or Clearstream, Luxembourg, the Frankfurt Warrant Agent or the Paris Security Agent, as the case may be, shall be null and void.

If such Exercise Notice is subsequently corrected to the satisfaction of the Principal Warrant Agent or, in the case of Warrants represented by a Euroclear/CBL Global Warrant, Euroclear or Clearstream, Luxembourg in consultation with the Principal Warrant Agent, as the case may be, it shall be deemed to be a new Exercise Notice submitted at the time such correction was delivered to

Euroclear or Clearstream, Luxembourg, the Frankfurt Warrant Agent or the Paris Security Agent, as the case may be, with a copy to the Principal Warrant Agent and Merrill Lynch International.

**If Automatic Exercise is not specified in the applicable Final Terms, any Warrants with respect to which the Exercise Notice has not been duly completed and delivered in the manner set out above by the cut-off time specified in Condition 21(A)(a), in the case of American Style Warrants, or Condition 21(A)(b), in the case of European Style Warrants, shall become void.**

Euroclear and/or Clearstream, Luxembourg, the Frankfurt Warrant Agent or the Paris Security Agent, as the case may be, shall use its best efforts promptly to notify the Holder submitting an Exercise Notice if, in consultation with the Principal Warrant Agent, it has determined that such Exercise Notice is incomplete or not in proper form. In the absence of negligence or wilful misconduct on its part, none of the Issuer, the Guarantor, the Security Agents, Euroclear and/or Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France, shall be liable to any person with respect to any action taken or omitted to be taken by it in connection with such determination or the notification of such determination to a Holder.

*(E) Automatic Exercise*

This paragraph only applies to Warrants which are not Swedish Warrants and (i) if Automatic Exercise is specified in the applicable Final Terms and the Warrants are automatically exercised as provided in Condition 21(A)(a) or Condition 21(A)(b) or (ii) the Warrants are automatically exercised pursuant to Condition 21D.

In order to receive the Cash Settlement Amount, if the Warrants are Cash Settled Warrants, or the Entitlement, if the Warrants are Physical Delivery Warrants, in respect of a Warrant, or if Units are specified in the applicable Final Terms, a Unit, as the case may be, the relevant Holder must: (A) in the case of Warrants represented by a Euroclear/CBL Global Warrant deliver or send by fax or authenticated SWIFT message (confirmed in writing) a duly completed Exercise Notice to Euroclear or Clearstream, Luxembourg, as the case may be with a copy to Merrill Lynch International and the Principal Warrant Agent on any Business Day until not later than 10.00 a.m., Brussels or Luxembourg time (as appropriate), on the day (the "Cut-off Date") falling 180 calendar days after (i) the Expiration Date, in the case of American Style Warrants, or (ii) the Actual Exercise Date, in the case of European Style Warrants or (B) in the case of Warrants represented by a CBF Global Warrant, deliver a duly completed Exercise Notice to the Frankfurt Warrant Agent with a copy to Merrill Lynch International and the Principal Warrant Agent on any Business Day until not later than 10.00 a.m., Frankfurt time on the Cut-off Date (as defined above) or (C) in the case of Warrants represented by a Euroclear France Global Warrant, deliver a duly completed Exercise Notice to the Paris Security Agent with a copy to Merrill Lynch International and the Principal Warrant Agent on any Business Day until not later than 10.00 a.m., Paris time on the Cut-off Date (as defined above). The Exercise Notice shall include the applicable information set out in the Exercise Notice referred to in Condition 22(A)(a), Condition 22(A)(b) or Condition 22(A)(c) as applicable. The Business Day during the period from the Expiration Date or the Actual Exercise Date, as the case may be, until the Cut-off Date on which an Exercise Notice is delivered to Euroclear, Clearstream, Luxembourg, the Frankfurt Warrant Agent or the Paris Security Agent, as the case may be, and a copy thereof delivered to Merrill Lynch International and the Principal Warrant Agent is referred to in this Condition as the "Exercise Notice Delivery Date", provided that if the Exercise Notice is delivered to Euroclear or Clearstream, Luxembourg or the Frankfurt Warrant Agent or the Paris Security Agent, as the case may be, and a copy thereof delivered to the Principal Warrant Agent at or after 10:00 a.m., Brussels, Luxembourg, Frankfurt or Paris time (as appropriate) on a Business Day the Exercise Notice Delivery Date shall be deemed to be the next succeeding Business Day.

Subject to the relevant Holder performing its obligations in respect of the relevant Warrant or Unit, as the case may be, in accordance with these Terms and Conditions, the Settlement Date for such Warrants or Units, as the case may be, shall be (i) in the case of Cash Settled Warrants, the fourth Business Day following the Exercise Notice Delivery Date and (ii) in the case of Physical Delivery Warrants and subject to Conditions 5(B) and 5(C), the fourth Settlement Business Day following the Exercise Notice Delivery Date. In the event that a Holder does not so deliver an Exercise Notice in

accordance with this Condition prior to 10.00 a.m. Brussels, Luxembourg, Frankfurt or Paris time (as appropriate) on the Cut-off Date, the Issuer's obligations in respect of such Warrants and the Guarantor's obligations in respect of the Guarantee shall be discharged and no further liability in respect thereof shall attach to the Issuer or the Guarantor.

**(F) Minimum and Maximum Number of Warrants Exercisable**

**(a) American Style Warrants**

This paragraph (a) applies only to American Style Warrants:

- (i) The number of Warrants exercisable by any Holder on any Actual Exercise Date, as determined by the Issuer, must not be less than the Minimum Exercise Number specified in the applicable Final Terms and, if specified in the applicable Final Terms, if a number greater than the Minimum Exercise Number, must be an integral multiple of the number specified in the applicable Final Terms. Any Exercise Notice which purports to exercise Warrants in breach of this provision shall be void and of no effect.
- (ii) If the Issuer determines that the number of Warrants being exercised on any Actual Exercise Date by any Holder or a group of Holders (whether or not acting in concert) exceeds the Maximum Exercise Number (a number equal to the Maximum Exercise Number being the "Quota"), the Issuer may deem the Actual Exercise Date for the first Quota of such Warrants, selected at the discretion of the Issuer, to be such day and the Actual Exercise Date for each additional Quota of such Warrants (and any remaining number thereof) to be each of the succeeding Exercise Business Days until all such Warrants have been attributed with an Actual Exercise Date, provided, however, that the deemed Actual Exercise Date for any such Warrants which would thereby fall after the Expiration Date shall fall on the Expiration Date. In any case where more than the Quota of Warrants are exercised on the same day by Holder(s), the order of settlement in respect of such Warrants shall be at the sole discretion of the Issuer.

**(b) European Style Warrants**

This paragraph (b) applies only to European Style Warrants:

The number of Warrants exercisable by any Holder on any Exercise Date as determined by the Issuer must be equal to the Minimum Exercise Number specified in the applicable Final Terms and, if specified in the applicable Final Terms, if a number greater than the Minimum Exercise Number, must be an integral multiple of the number specified in the applicable Final Terms. Any Exercise Notice which purports to exercise Warrants in breach of this provision shall be void and be of no effect.

**23. Additional Amounts**

**(A) Calculation of Additional Amounts**

If so specified in the applicable Final Terms, each Warrant pays additional amounts from and including the Issue Date at the Additional Amount Rate payable in arrear on each Additional Amount Payment Date.

The additional amount payable in respect of each Warrant on each Additional Amount Payment Date will amount to the Additional Amount for the Additional Amount Period ending on (but excluding) such Additional Amount Payment Date.

If an additional amount is required to be calculated for a period ending other than on (but excluding) an Additional Amount Payment Date, it will be calculated on the basis of the number of days from and including the most recent Additional Amount Payment Date (or, if none, the Issue Date) to but excluding the relevant payment date and the Additional Amount Rate Day Count Fraction.

**(B) Accrual of Additional Amounts**

Each Warrant will cease to accrue additional amounts from and including the Additional Amount Cut-off Date or, if earlier, the date on which the Warrants are cancelled (the "Cancellation Date"), if applicable, in accordance with these Terms and Conditions unless payment of the amount and/or

delivery of any Entitlement due on the Settlement Date or Cancellation Date, as the case may be, is improperly withheld or refused or unless default is otherwise made in respect of the payment or delivery in which case additional amount(s) shall accrue from the date such amount or delivery of such Entitlement was due until such amount or delivery of such Entitlement is paid or delivered, as the case may be.

For the avoidance of doubt, no additional amount on the Warrants shall accrue beyond the Exercise Date in the event that delivery of any Entitlement is postponed due to the occurrence of a Settlement Disruption Event.

(C) *Payment of Additional Amounts*

Except in the case of Swedish Warrants, where the Warrants pay additional amounts as specified in the applicable Final Terms, subject as provided below, the Issuer or failing the Issuer, the Guarantor shall pay or cause to be paid the Additional Amount for each Warrant in respect of each Additional Amount Payment Date by credit or transfer to the Holder's account with the relevant Clearing System for value on the relevant Additional Amount Payment Date, such payment to be made in accordance with the rules of the relevant Clearing System.

Except in the case of Swedish Warrants, the Issuer or the Guarantor, as applicable, will be discharged by payment to, or to the order of, the relevant Clearing System in respect of the amount so paid. Each of the persons shown in the records of the relevant Clearing System as the holder of a particular amount of the Warrants must look solely to such Clearing System for his share of each such payment so made to, or to the order of, the relevant Clearing System.

In the case of Swedish Warrants, where the Warrants pay Additional Amount as specified in the applicable Final Terms, subject as provided below, payment of the Additional Amount for each Swedish Warrant will be made to the persons registered as Holders in the Swedish Register on the fifth Business Day prior to the relevant Additional Amount Payment Date (the "Additional Amount Payment Record Date"). The Swedish Security Agent will pay the Additional Amount through the Swedish CSD to each Holder appearing in the Swedish Register on the Additional Amount Record Date on the relevant Additional Amount Payment Date.

Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment.

(D) *Definitions*

"30/360 (Floating)" or "360/360" or "Bond Basis" means the number of days in the Additional Amount Period divided by 360, calculated on a formula basis as follows:

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

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Additional Amount Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Additional Amount Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Additional Amount Period, unless such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Additional Amount Period, unless such number would be 31 and D<sub>1</sub> is greater than 29, in which case D<sub>2</sub> will be 30.



**"30E/360" or "Eurobond Basis"** means the number of days in the Additional Amount Period divided by 360, calculated on a formula basis as follows:

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

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Additional Amount Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Additional Amount Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Additional Amount Period, unless such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Additional Amount Period, unless such number would be 31, in which case D<sub>2</sub> will be 30.

**"30E/360 (ISDA)"** means the number of days in the Additional Amount Period divided by 360, calculated on a formula basis as follows:

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

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Additional Amount Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Additional Amount Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Additional Amount Period, unless (a) that day is the last day of February or (b) such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Additional Amount Period, unless (a) that day is the last day of February but not the Exercise Date or (b) such number would be 31, in which case D<sub>2</sub> will be 30.

**"Actual/360"** means the actual number of days in the Additional Amount Period divided by 360.

**"Actual/Actual (ISDA)"** means the actual number of days in the Additional Amount Period divided by 365 (or, if any portion of that Additional Amount Period falls in a leap year, the sum of (a) the actual number of days in that portion of the Additional Amount Period falling in a leap year divided by 366; and (b) the actual number of days in that portion of the Additional Amount Period falling in a non-leap year divided by 365).

**"Actual/365 (Fixed)"** means the actual number of days in the Additional Amount Period divided by 365.

**"Additional Amount"** means, in respect of each Warrant and each Additional Amount Period, an amount calculated by the Calculation Agent as follows:

Notional Amount per Warrant x Additional Amount Rate x Additional Amount Rate Day Count Fraction.

**"Additional Amount Period"** means the period commencing on (and including) the Issue Date to (but excluding) the first Additional Amount Payment Date (or if earlier the Additional Amount Cut-off Date) and each period commencing on (and including) an Additional Amount Payment Date to (but excluding) the next following Additional Amount Payment Date (or if earlier the Additional Amount Cut-off Date).

**24. Terms applicable to Certificates only**

Conditions 25, 26, 27, 28, 29 and 30 inclusive apply to Certificates only.

**25. Definitions (Certificates)**

For the purposes of the Certificates:

**"Definitive Certificates"** means Definitive Bearer Certificates and Swedish Definitive Certificates.

**"Global W&C Security"** means, as the context so requires, a Global Certificate.

**"Italian Listed Certificates"** means Cash Settled Certificates which are listed and admitted to trading on the electronic "Securitisised Derivatives Market" (the "SeDex"), organised and managed by Borsa Italiana S.p.A.; and

**"Swedish Securities"** means, as the context so requires, Swedish Definitive Certificates and Swedish Dematerialised Certificates.

**26. Form of Certificates**

If applicable Final Terms indicate that the Certificates ("**Euroclear/CBL Certificates**") are to be issued into and transferred through accounts at Euroclear and Clearstream, Luxembourg, such series of Euroclear/CBL Certificates will on issue be constituted by either a temporary global certificate in bearer form (the "**Euroclear/CBL Temporary Global Certificate**") or a permanent global certificate in bearer form (the "**Euroclear/CBL Permanent Global Certificate**" and, together with the Euroclear/CBL Temporary Global Certificate, the "**Euroclear/CBL Global Certificates**", or the "**Global Certificates**" and each a "**Euroclear/CBL Global Certificate**" or "**Global Certificate**") as indicated in the applicable Final Terms which, in either case, will be deposited with a depositary common to Euroclear and Clearstream, Luxembourg.

If the applicable Final Terms indicate that the Certificates ("**CBF Certificates**") are to be issued into and transferred through accounts at Clearstream, Frankfurt, such series of CBF Certificates will on issue be constituted by either a temporary global certificate in bearer form (the "**CBF Temporary Global Certificate**") or a permanent global certificate in bearer form (the "**CBF Permanent Global Certificate**" and, together with the CBF Temporary Global Certificate, the "**CBF Global Certificates**" or the "**Global Certificates**" and each a "**CBF Global Certificate**" or a "**Global Certificate**") as indicated in the applicable Final Terms which, in either case, will be deposited with Clearstream, Frankfurt.

If the applicable Final Terms indicate that the Certificates ("**Euroclear France Certificates**") are to be issued into and transferred through accounts at Euroclear France, such series of Euroclear France Certificates will on issue be constituted by either a temporary global certificate in bearer form (the "**Euroclear France Temporary Global Certificate**") or a permanent global certificate in bearer form (the "**Euroclear France Permanent Global Certificate**" and, together with the Euroclear France Temporary Global Certificate, the "**Euroclear France Global Certificates**", or the "**Global Certificates**" and each a "**Euroclear France Global Certificate**" or a "**Global Certificate**") as indicated in the applicable Final Terms which, in either case, will be deposited with Euroclear France.

If the applicable Final Terms indicate that the Certificates ("**Swedish Dematerialised Certificates**") are to be issued into and cleared through the Swedish CSD, such series of Swedish Dematerialised Certificates will be issued in dematerialised and uncertificated book entry form in accordance with

the Swedish Financial Instruments Accounts Act (in Swedish: *lag (1998: 1479) om kontoföring av finansiella instrument*).

If the applicable Final Terms indicate that the Certificates ("**Swedish Definitive Certificates**") are to be issued in definitive bearer form, such series will on issue be constituted by a definitive Certificate in bearer form. Swedish Definitive Certificates will only be issued in the circumstances described below. Swedish Dematerialised Certificates and Swedish Definitive Certificates are each referred to herein as "**Swedish Certificates**".

On or after the 40th day following the Issue Date of the Euroclear/CBL Certificates, the Euroclear/CBL Temporary Global Certificate will be exchangeable (the date of such exchange, the "**Exchange Date**") (a) for a Euroclear/CBL Permanent Global Certificate or (b) for definitive Certificates in bearer form ("**Definitive Bearer Certificates**" and each a "**Definitive Bearer Certificate**"), in each case only to the extent that certification (in a form to be provided) to the effect that the beneficial owners of interests in such Certificate are not U.S. persons or persons who have purchased for resale to any U.S. person, as required by U.S. Treasury Regulations, has been received by Euroclear and/or Clearstream, Luxembourg and Euroclear and/or Clearstream, Luxembourg, as applicable, has given a like certification (based on the certification received) to the Principal Certificate Agent. A Euroclear/CBL Permanent Global Certificate will be exchangeable (free of charge), in whole but not in part, for Definitive Bearer Certificates upon not less than 60 days' notice from Euroclear and/or Clearstream, Luxembourg (acting on the instructions of any holder of an interest in such Euroclear/CBL Permanent Global Certificate). No Definitive Bearer Certificate delivered in exchange for a Euroclear/CBL Temporary Global Certificate or a Euroclear/CBL Permanent Global Certificate, as the case may be, will be mailed or otherwise delivered to any location in the United States or its possessions during the restricted period (as such term is defined in U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D)(7)).

On or after the 40th day following the Issue Date of the CBF Certificates, the CBF Temporary Global Certificate will be exchangeable (the date of such exchange, the "**Exchange Date**") (a) for a CBF Permanent Global Certificate or (b) for Definitive Bearer Certificates, in each case only to the extent that certification (in a form to be provided) to the effect that the beneficial owners of interests in such Certificate are not U.S. persons or persons who have purchased for resale to any U.S. person, as required by U.S. Treasury Regulations, has been received by Clearstream, Frankfurt and Clearstream, Frankfurt has given a like certification (based on the certification received) to the Principal Certificate Agent. A CBF Permanent Global Certificate will be exchangeable (free of charge), in whole but not in part, for Definitive Bearer Certificates upon not less than 60 days' notice from Clearstream, Frankfurt (acting on the instructions of any holder of an interest in such CBF Permanent Global Certificate). No Definitive Bearer Certificate delivered in exchange for a CBF Temporary Global Certificate or a CBF Permanent Global Certificate, as the case may be, will be mailed or otherwise delivered to any location in the United States or its possessions during the restricted period (as such term is defined in U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D)(7)).

On or after the 40th day following the Issue Date of the Euroclear France Certificates, the Euroclear France Temporary Global Certificate will be exchangeable (the date of such exchange, the "**Exchange Date**") (a) for a Euroclear France Permanent Global Certificate or (b) for Definitive Bearer Certificates, in each case only to the extent that certification (in a form to be provided) to the effect that the beneficial owners of interests in such Certificate are not U.S. persons or persons who have purchased for resale to any U.S. person, as required by U.S. Treasury Regulations, has been received by Euroclear France and Euroclear France has given a like certification (based on the certification received) to the Paris Security Agent. A Euroclear France Permanent Global Certificate will be exchangeable (free of charge), in whole but not in part, for Definitive Bearer Certificates upon not less than 60 days' notice from Euroclear France (acting on the instructions of any holder of an interest in such Euroclear France Permanent Global Certificate). No Definitive Bearer Certificate delivered in exchange for a Euroclear France Temporary Global Certificate or a Euroclear France Permanent Global Certificate, as the case may be, will be mailed or otherwise delivered to any

location in the United States or its possessions during the restricted period (as such term is defined in U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D)(7)).

On or after the Issue Date of Swedish Dematerialised Certificates, a Holder may request that all (but not some only) of its Swedish Certificates (each such Certificate an "**Exchanged Certificate**") be cancelled and exchanged (the date of such exchange the "**Swedish Certificate Exchange Date**") for Swedish Definitive Certificates of a separate Series, upon giving not less than 45 and not more than 90 days' notice to the Issuer in accordance with this Condition (such notice a "**Swedish Certificate Exchange Notice**"), subject to the delivery of a U.S. Certification in accordance with Condition 27 on the Issue Date. Except in relation to the Issue Date and the Issue Price and as specified otherwise herein, a Swedish Definitive Certificate shall be issued on the same Terms and Conditions as the relevant Exchanged Certificate. No transfer of any Exchanged Certificate shall be permitted on or after the date of delivery of the Swedish Certificate Exchange Notice in respect of such Certificate. In the event that a Swedish Dematerialised Certificate is to be cancelled and exchanged as described herein, the Issuer will notify the Swedish CSD and the Swedish Security Agent of such cancellation and exchange and the Swedish Security Agent will make available at its specified office on the Swedish Certificate Exchange Date a Swedish Definitive Certificate to the person registered as Holder in respect of the relevant Exchanged Certificate on the fifteenth Business Day prior to the Swedish Certificate Exchange Date. With effect from the Swedish Certificate Exchange Date the relevant Exchanged Certificate shall be cancelled with no amounts due to the Holder in respect of such cancellation. No amounts (including printing fees or other charges or expenses) shall be due and payable by the Holder in respect of the exchange of its Swedish Dematerialised Certificate(s) for Swedish Definitive Certificate(s). The provisions related to exercise and settlement in respect of Swedish Definitive Certificates shall be agreed between the Issuer and the Swedish Security Agent prior to the Issue Date of such Certificates and shall be set out in the applicable Final Terms. No Swedish Definitive Certificate delivered in exchange for a Swedish Dematerialised Certificate will be mailed or otherwise delivered to any location in the United States or its possessions during the restricted period (as such term is defined in U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D)(7)).

A Swedish Certificate Exchange Notice must be delivered in writing in English to the Issuer at its registered office and Merrill Lynch International at its registered office (Attention: Head of SSG Legal) and shall be deemed to take effect when received by the Issuer and Merrill Lynch International.

The following legend will appear on all Definitive Certificates which have an original maturity of more than 183 days:

"ANY UNITED STATES PERSON WHO HOLDS THIS OBLIGATION WILL BE SUBJECT TO LIMITATIONS UNDER THE UNITED STATES INCOME TAX LAWS, INCLUDING THE LIMITATIONS PROVIDED IN SECTIONS 165(j) AND 1287(a) OF THE UNITED STATES INTERNAL REVENUE CODE".

Definitive Certificates with maturities of 183 days or less are required to be issued in minimum denominations of US\$500,000 (or its equivalent in other currencies).

The following legend will appear on all Definitive Certificates which have maturities of 183 days or less and have denominations of US\$500,000 or more (or its equivalent in other currencies):

"BY ACCEPTING THIS OBLIGATION, THE HOLDER REPRESENTS AND WARRANTS THAT IT IS NOT A UNITED STATES PERSON (OTHER THAN AN EXEMPT RECIPIENT DESCRIBED IN SECTION 6049(b)(4) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER) AND THAT IT IS NOT ACTING FOR OR ON BEHALF OF A UNITED STATES PERSON (OTHER THAN AN EXEMPT RECIPIENT DESCRIBED IN SECTION 6049(b)(4) OF THE INTERNAL REVENUE CODE AND THE REGULATIONS THEREUNDER)."

**27. Type and Title (Certificates)**

If the Certificates are Swedish Certificates, they will be Cash Settled Certificates.

Title to Definitive Certificates will pass by delivery and the bearer of any Definitive Certificates shall be treated by the Issuer, the Guarantor and any Security Agent as the absolute owner thereof.

On the Issue Date the beneficial owner of a Swedish Dematerialised Certificate must provide certification (a "U.S. Certification") (in a form to be provided), directly or indirectly to the Issuer, to the effect that the beneficial owners of interests in such Certificate are not U.S. persons or persons who have purchased for resale to any U.S. person, as required by U.S. Treasury Regulations.

**28. Exercise Rights (Certificates)**

**(A) Certificates other than Credit Linked Certificates**

Certificates other than Credit Linked Certificates shall be automatically exercised on the Actual Exercise Date. If the Certificates are Cash Settled Certificates, each such Certificate entitles its Holder to receive from the Issuer on the Settlement Date the Cash Settlement Amount. If the Certificates are Physical Delivery Certificates, each such Certificate entitles its Holder, subject to certification as to non-U.S. beneficial ownership and to the provisions of Condition 29(A), to receive from the Issuer on the Settlement Date the Entitlement subject to payment of any Expenses. The method of delivery of the Entitlement is set out in the applicable Final Terms.

Unless otherwise specified in the applicable Final Terms, Certificates of the same Holder automatically exercised and in respect of which a Collection Notice (as defined below) has been duly given as provided in Condition 29(A), will be aggregated for the purpose of determining the aggregate Entitlements in respect of such Certificates, provided that the aggregate Entitlements will be rounded down to the nearest whole unit of the Relevant Asset or each of the Relevant Assets, as the case may be, in such manner as the Calculation Agent shall determine. Therefore, fractions of the Relevant Asset or of each of the Relevant Assets, as the case may be, will not be delivered and in lieu thereof a cash adjustment calculated by the Calculation Agent in its sole and absolute discretion shall be paid to the Holder.

Following exercise of a Share Certificate which is a Physical Delivery Certificate, all dividends on the relevant Shares to be delivered will be payable to the party that would receive such dividend according to market practice for a sale of the Shares executed on the Actual Exercise Date and to be delivered in the same manner as such relevant Shares. Any such dividends to be paid to a Holder will be paid to the account specified by the Holder in the relevant Collection Notice as referred to in Condition 29(A)(a)(1)(v), Condition 29(A)(b)(1)(iii) or Condition 29(A)(c)(1)(iii), as applicable.

**(B) Credit Linked Certificates**

Subject as provided in Credit Linked Condition 4 and Credit Linked Condition 5, Credit Linked Certificates shall be automatically exercised on the Actual Exercise Date, each such Certificate entitling its Holder to receive from the Issuer on the Settlement Date the Cash Settlement Amount.

**(C) Issuer Call Option**

If Issuer Call Option is specified as applicable in the applicable Final Terms the Issuer may, having given not less than 10 nor more than 60 days' notice (or such other Issuer Call Option Notice Period as is set out in the applicable Final Terms) to the Holders in accordance with Condition 10 (which notice shall be irrevocable) elect that the Exercise Date for all (but not some only) of the Certificates be brought forward to the Call Option Date. If Call Option Cash Settlement is specified as applying in the applicable Final Terms, notwithstanding any provision to the contrary in the Terms and Conditions and/or the applicable Final Terms (a) if the Certificates are not Cash Settled Certificates, the Certificates shall be deemed to be Cash Settled Certificates and (b) the Cash Settlement Amount shall be the Call Option Cash Settlement Amount specified in the applicable Final Terms.

**(D) Mandatory Early Exercise**

If Mandatory Early Exercise is specified as applicable in the applicable Final Terms and a Mandatory Early Exercise Event occurs, the Exercise Date for all (but not some only) of the Certificates will be brought forward to the Mandatory Early Exercise Date. If Mandatory Early Exercise Cash Settlement is specified as applicable in the applicable Final Terms, notwithstanding any provision to the contrary in the Terms and Conditions and/or the applicable Final Terms (a) if the Certificates are not Cash Settled Certificates, the Certificates shall be deemed to be Cash Settled Certificates and (b) the Cash Settlement Amount shall be the Mandatory Early Exercise Cash Settlement Amount specified in the applicable Final Terms.

*(E) Holder Put Option*

If Holder Put Option is specified as applicable in the applicable Final Terms, a Holder may, by giving not less than 10 nor more than 60 days' notice (or such other Holder Put Option Notice Period as is set out in the applicable Final Terms) as set out below elect to bring forward the Exercise Date for his Certificates to the Put Option Date set out in the relevant Put Notice (as defined below). If Put Option Cash Settlement is specified as applying in the applicable Final Terms, notwithstanding any provision to the contrary in the Terms and Conditions and/or the applicable Final Terms (a) if the Certificates are not Cash Settled Certificates, the Certificates shall be deemed to be Cash Settled Certificates and (b) the Cash Settlement Amount for the relevant Certificates shall be the Put Option Cash Settlement Amount specified in the applicable Final Terms.

In order to exercise the right to bring forward the Exercise Date of a Certificate the Holder must deliver by fax or authenticated SWIFT message (confirmed in writing) a duly completed notice of exercise (a "Put Notice") in the form set out in the Agency Agreement to (a) in the case of Euroclear/CBL Certificates, Euroclear or Clearstream, Luxembourg with a copy to Merrill Lynch International and the Principal Certificate Agent, (b) in the case of CBF Certificates, the Principal Certificate Agent with a copy to Merrill Lynch International, (c) in the case of Euroclear France Certificates, the Paris Security Agent with a copy to Merrill Lynch International or (d) in the case of Swedish Dematerialised Certificates, the Swedish Security Agent with a copy to Merrill Lynch International. Copies of the Put Notice are available at the specified offices of the Agents. Once delivered a Put Notice shall be irrevocable and the Certificates the subject of such notice may not be transferred.

*(F) Prescription*

Definitive Certificates will become void unless presented for payment within a period of ten years (in the case of principal) and five years (in the case of additional amounts) after the Relevant Date (as defined below) therefor.

As used herein, the "Relevant Date" means the date on which such payment first becomes due, except that, if the full amount of the moneys payable has not been duly received by the relevant Security Agent on or prior to such due date, it means the date on which, the full amount of such moneys having been so received, notice to that effect is duly given to the Holders in accordance with Condition 10.

**29. Collection Notices and Settlement (Certificates)**

*(A) Collection Notices*

*(a) Euroclear/CBL Certificates*

If the Certificates are Euroclear/CBL Certificates, in order to receive the Entitlement in respect of a Certificate, the relevant Holder must deliver or send by fax or authenticated SWIFT message (confirmed in writing) a duly completed Euroclear/CBL collection notice (a "Collection Notice") in the form set out in the Agency Agreement (copies of which form may be obtained from Euroclear, Clearstream, Luxembourg and the relevant Security Agents) to Euroclear or Clearstream, Luxembourg, as the case may be, with a copy to Merrill Lynch International and the Principal Certificate Agent on (x) in the case of Certificates other than Credit Linked Certificates any Business Day up until not later than 10.00 a.m., Brussels or Luxembourg time (as appropriate), on the Actual Exercise Date or (y) in the case of Credit Linked Certificates, the Credit Cut-Off Date (each the

**"Cut-off Date").** In the event that a Certificate is in definitive form the relevant Collection Notice must be delivered in writing, along with the relevant Definitive Certificate in the manner provided above to the Issuer with a copy to the Principal Certificate Agent and to Merrill Lynch International.

(1) The Collection Notice shall:

- (i) specify the series of the Certificates and the number of Certificates the subject of such Collection Notice;
- (ii) except in the case of Definitive Certificates, specify the number of the Holder's account at Euroclear or Clearstream, Luxembourg, as the case may be, to be debited with the Certificates the subject of such Collection Notice;
- (iii) except in the case of Definitive Certificates, irrevocably instruct Euroclear or Clearstream, Luxembourg, as the case may be, to debit on or before the Settlement Date the Holder's account with the Certificates the subject of such Collection Notice;
- (iv) include an undertaking to pay all Expenses and except in the case of Definitive Certificates, an authority to Euroclear or Clearstream, Luxembourg, as the case may be, to debit a specified account of the Holder at Euroclear or Clearstream, Luxembourg, as the case may be, in respect thereof and to pay such Expenses;
- (v) include such details as are required by the applicable Final Terms for delivery of the Entitlement which may include account details and/or the name and address of any person(s) into whose name evidence of the Entitlement is to be registered and/or any bank, broker or agent to whom documents evidencing the Entitlement are to be delivered and specify the name and the number of the Holder's account with Euroclear or Clearstream, Luxembourg, as the case may be, or, in the case of a Definitive Certificate, at a bank in the principal financial centre of the relevant Settlement Currency to be credited with any cash payable by the Issuer, either in respect of any cash amount constituting the Entitlement or any dividends relating to the Entitlement or as a result of the occurrence of a Settlement Disruption Event or a Failure to Deliver due to Illiquidity and the Issuer electing to pay the Disruption Cash Settlement Price or Failure to Deliver Settlement Price, as applicable, or in respect of any Partial Cash Settlement Amount;
- (vi) in the case of FX Linked Certificates only, specify the number of the Holder's account at Euroclear or Clearstream, Luxembourg, as the case may be, or, in the case of a Definitive Certificate, at a bank in the principal financial centre of the relevant Settlement Currency to be credited with the amount due upon exercise of the Certificates;
- (vii) certify, *inter alia*, that the beneficial owner of each Certificate which is the subject of such Collection Notice is not a U.S. person (as defined in the Collection Notice), the Certificate was not held on behalf of a U.S. person and no cash, securities or other property have been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with such exercise and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms; and
- (viii) authorise the production of such certification in any applicable administrative or legal proceedings,

all as provided in the Agency Agreement.

(2) If Condition 5(C) applies, the form of Collection Notice required to be delivered will be different from that set out above. Copies of such Collection Notice may be obtained from Euroclear, Clearstream, Luxembourg and the Certificate Agents.

(b) CBF Certificates

If the Certificates are CBF Certificates, in order to receive the Entitlement in respect of a Certificate, the relevant Holder must transfer such Certificates to the Principal Certificate Agent and deliver or send by fax or authenticated SWIFT message (confirmed in writing) a duly completed CBF collection notice (a "Collection Notice") in the form set out in the Agency Agreement (copies of which form may be obtained the Certificate Agents) in the case of Certificates other than Credit Linked Certificates in each case to the Principal Certificate Agent with a copy to Merrill Lynch International on (x) any Business Day up until not later than 10.00 a.m., Frankfurt time, on the Actual Exercise Date or (y) in the case of Credit Linked Certificates, the Credit Cut-Off Date (each the "Cut-off Date").

In the event that a Certificate is in definitive form the relevant Collection Notice must be delivered, along with the relevant Definitive Certificate in the manner provided above to the Issuer with a copy to the Principal Certificate Agent and to Merrill Lynch International.

(1) The Collection Notice shall:

- (i) specify the series of the Certificates and the number of Certificates the subject of such Collection Notice;
- (ii) include an undertaking to pay all Expenses;
- (iii) include such details as are required by the applicable Final Terms for delivery of the Entitlement which may include account details and/or the name and address of any person(s) into whose name evidence of the Entitlement is to be registered and/or any bank, broker or agent to whom documents evidencing the Entitlement are to be delivered and specify the name and the number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency to be credited with any cash payable by the Issuer, either in respect of any cash amount constituting the Entitlement or any dividends relating to the Entitlement or as a result of the occurrence of a Settlement Disruption Event or a Failure to Deliver due to Illiquidity and the Issuer electing to pay the Disruption Cash Settlement Price or Failure to Deliver Settlement Price, as applicable, or in respect of any Partial Cash Settlement Amount;
- (iv) in the case of FX Linked Certificates only, specify the number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency to be credited with the amount due upon exercise of the Certificates;
- (v) certify, *inter alia*, that the beneficial owner of each Certificate which is the subject of such Collection Notice is not a U.S. person (as defined in the Collection Notice), the Certificate was not held on behalf of a U.S. person and no cash, securities or other property have been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with such exercise and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms; and
- (vi) authorise the production of such certification in any applicable administrative or legal proceedings,

all as provided in the Agency Agreement.

- (2) If Condition 5(C) applies, the form of Collection Notice required to be delivered will be different from that set out above. Copies of such Collection Notice may be obtained from the relevant Certificate Agents.

(c) Euroclear France Certificates

If the Certificates are Euroclear France Certificates, in order to receive the Entitlement in respect of a Certificate, the relevant Holder must transfer such Certificates to the Paris Security Agent and



deliver or send by fax or authenticated SWIFT message (confirmed in writing) a duly completed Euroclear France collection notice (a "Collection Notice") in the form set out in the Agency Agreement (copies of which form may be obtained the Certificate Agents) in each case to the Paris Security Agent with a copy to Merrill Lynch International and the Principal Certificate Agent on (x) in the case of Certificates other than Credit Linked Certificates any Business Day up until not later than 10.00 a.m., Paris time, on the Exercise Date or (y) in the case of Credit Linked Certificates, the Credit Cut-Off Date (each the "Cut-off Date").

In the event that a Certificate is in definitive form the relevant Collection Notice must be delivered, along with the relevant Definitive Certificate in the manner provided above to the Issuer with a copy to the Paris Security Agent and to Merrill Lynch International and the Principal Certificate Agent.

(1) The Collection Notice shall:

- (i) specify the series of the Certificates and the number of Certificates the subject of such Collection Notice;
- (ii) include an undertaking to pay all Expenses;
- (iii) include such details as are required by the applicable Final Terms for delivery of the Entitlement which may include account details and/or the name and address of any person(s) into whose name evidence of the Entitlement is to be registered and/or any bank, broker or agent to whom documents evidencing the Entitlement are to be delivered and specify the name and the number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency to be credited with any cash payable by the Issuer, either in respect of any cash amount constituting the Entitlement or any dividends relating to the Entitlement or as a result of the occurrence of a Settlement Disruption Event or a Failure to Deliver due to Illiquidity and the Issuer electing to pay the Disruption Cash Settlement Price or Failure to Deliver Settlement Price, as applicable, or in respect of any Partial Cash Settlement Amount;
- (iv) in the case of FX Linked Certificates only, specify the number of the Holder's account at a bank in the principal financial centre of the relevant Settlement Currency to be credited with the amount due upon exercise of the Certificates; and
- (v) certify, *inter alia*, that the beneficial owner of each Certificate which is the subject of such Collection Notice is not a U.S. person (as defined in the Collection Notice), the Certificate was not held on behalf of a U.S. person and no cash, securities or other property have been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with such exercise and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms; and
- (vi) authorise the production of such certification in any applicable administrative or legal proceedings,

all as provided in the Agency Agreement.

- (2) If Condition 5(C) applies, the form of Collection Notice required to be delivered will be different from that set out above. Copies of such Collection Notice may be obtained from the relevant Security Agents.

(d) Late Delivery and Non-delivery of Collection Notice

If a Holder so delivers a duly completed Collection Notice after the Cut-off Date, the Entitlement shall be delivered, or in the case of Credit Linked Certificates, Delivered as soon as practicable after the Settlement Date or, in the case of Credit Linked Certificates, the Credit Settlement Date, Provided That if a Holder does not so deliver a duly completed Collection Notice in accordance with this Condition 29(A) prior to the close of business in the place of receipt on the 90th calendar day following the Cut-off Date, the Issuer's obligations in respect of such Certificates and the Guarantor's

obligations in respect of the Guarantee shall be discharged and no further liability in respect thereof shall attach to the Issuer or the Guarantor. For the avoidance of doubt, in such circumstances such Holder shall not be entitled to any payment, whether of interest or otherwise as a result of such Settlement Date or Credit Settlement Date falling after the originally designated Settlement Date or Credit Settlement Date, as the case may be, and no liability in respect hereof shall attach to the Issuer or the Guarantor.

After the delivery of a Collection Notice, the relevant Holder may not transfer the Certificates to which the Collection Notice relates.

**(B) *Verification of the Holder***

In the case of a Collection Notice submitted in respect of a Euroclear/CBL Certificate, upon receipt of a Collection Notice, Euroclear or Clearstream, Luxembourg, as the case may be, shall verify that the person submitting the Collection Notice is the holder of the relevant Certificates according to the books of Euroclear or Clearstream, Luxembourg, as the case may be. Subject thereto, Euroclear or Clearstream, Luxembourg, as the case may be, will confirm to the Principal Certificate Agent, the series and the number of Certificates being exercised, the relevant account details (if applicable) and the details for the delivery of the Entitlement in respect of each Certificate the subject of the relevant Collection Notice. Upon receipt of such confirmation, the Principal Certificate Agent will inform the Issuer thereof. Euroclear or Clearstream, Luxembourg, as the case may be, will on or before the Settlement Date debit the account of the relevant Holder with the Certificates the subject of the relevant Collection Notice.

In the case of a Collection Notice submitted in respect of a CBF Certificate, upon receipt of a Collection Notice and the Certificates the Principal Certificate Agent shall verify that the person delivering the Collection Notice is (or, if the Certificates have been transferred to the Principal Certificate Agent in accordance with Condition 29(4)(b) above, prior to such transfer was) the Holder according to the records of Clearstream, Frankfurt. Subject thereto, the Principal Certificate Agent shall notify the Issuer of the series number and the number of Certificates the subject of such notice, the account details and the details for the delivery of the Entitlement of each Certificate.

In the case of a Collection Notice submitted in respect of a Euroclear France Certificate, upon receipt of a Collection Notice and the Certificates the Paris Security Agent shall verify that the person delivering the Collection Notice is (or, if the Certificates have been transferred to the Paris Security Agent in accordance with Condition 30(4)(c) above, prior to such transfer was) the Holder according to the records of Euroclear France. Subject thereto, the Paris Security Agent shall notify the Issuer and the Principal Certificate Agent of the series number and the number of Certificates the subject of such notice, the account details and the details for the delivery of the Entitlement of each Certificate.

**(C) *Settlement***

**(a) *Cash Settled Certificates***

For so long as the Certificates are represented by Definitive Certificates, subject as provided below, the Issuer or failing the Issuer, the Guarantor shall pay or cause to be paid the Cash Settlement Amount (if any) for each Certificate by credit or transfer to an account in the relevant Settlement Currency outside the United States (in accordance with applicable U.S. Treasury Regulations) specified by the Holder, for value on the Settlement Date less any Expenses. In order to receive the Cash Settlement Amount less any Expenses the Holder must deliver the relevant Definitive Certificate, as the case may be, to the Issuer.

For so long as the Certificates are represented by a Global Certificate, subject as provided below, the Issuer or failing the Issuer, the Guarantor shall pay or cause to be paid the Cash Settlement Amount (if any) for each Certificate by credit or transfer to the Holder's account with the relevant Clearing System for value on the Settlement Date less any Expenses, such payment to be made in accordance with the rules of the relevant Clearing System. The Issuer or the Guarantor, as applicable, will be discharged by payment to, or to the order of, the relevant Clearing System in respect of the amount so paid. Each of the persons shown in the records of the relevant Clearing System as the holder of a

particular amount of the Certificates must look solely to such Clearing System for his share of each such payment so made to, or to the order of such Clearing System.

In the case of Swedish Dematerialised Certificates, subject as provided below, payment of the Cash Settlement Amount (if any) for each Certificate will be made to the person registered as the Holder in the Swedish Register on the fifth Business Day prior to the Settlement Date (the "**Settlement Record Date**") less any Expenses, only to the extent that a U.S. Certification has been provided in accordance with Condition 27 on the Issue Date. The Swedish Security Agent will pay the Cash Settlement Amount less any Expenses through the Swedish CSD to each Holder appearing in the Swedish Register on the Settlement Record Date on the Settlement Date.

Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment.

(b) **Physical Delivery Certificates**

Subject to payment of any Expenses with regard to the relevant Certificates, the Issuer shall deliver, or procure the delivery of, the Entitlement or, in the case of Credit Linked Certificates, Deliver, or procure the Delivery of the Deliverable Obligations comprising the Entitlement for each Certificate in respect of which a valid Collection Notice (and, in the case of Definitive Certificates, the relevant Definitive Certificate) has been delivered as provided in Condition 29(A) pursuant to the details specified in the Collection Notice subject as provided in Condition 5 and, in the case of CBF Certificates and Euroclear France Certificates, in respect of which the relevant Certificates have been transferred to the Principal Certificate Agent or the Paris Security Agent, as the case may be, as provided in Condition 29(A).

The Issuer shall at the risk of the relevant Holder deliver the Entitlement in respect of each Certificate or, in the case of Credit Linked Certificates, Deliver the Deliverable Obligations comprising the Entitlement in such commercially reasonable manner as the Issuer shall, in its sole discretion, determine to be appropriate for such delivery. In the case of Credit Linked Certificates, in relation to each Deliverable Obligation constituting the Entitlement, the Issuer will Deliver or procure the Delivery of the relevant Deliverable Obligation as provided above on the Credit Settlement Date Provided That if all or some of the Deliverable Obligations included in the Entitlement are Undeliverable Obligations and/or Hedge Disruption Obligations, then the Issuer shall continue to attempt to Deliver all or a portion of such Undeliverable Obligations or Hedge Disruption Obligations, as the case may be, on or before the 30th Business Day following the Credit Settlement Date (the "**Final Delivery Date**"),

Provided Further That if all or a portion of such Undeliverable Obligations or Hedge Disruption Obligations, as the case may be, are not Delivered by the Final Delivery Date the provisions of Credit Linked Condition 10 shall apply.

(D) **Determinations**

Any determination as to whether a Collection Notice is duly completed and in proper form shall be made by the Principal Certificate Agent in consultation with, in the case of Euroclear/CBL Certificates, Euroclear or Clearstream, Luxembourg, or in the case of Definitive Certificates the Issuer and shall be conclusive and binding on the Issuer, the relevant Security Agents and the relevant Holder. Subject as set out below, any Collection Notice so determined to be incomplete or not in proper form, or which is not copied to the Principal Certificate Agent (in the case of Euroclear/CBL Certificates) and Merrill Lynch International immediately after being delivered or sent to Euroclear or Clearstream, Luxembourg, the Principal Certificate Agent, the Paris Security Agent or the Issuer, as applicable, shall be null and void.

If such Collection Notice is subsequently corrected to the satisfaction of Euroclear or Clearstream, Luxembourg, the Principal Certificate Agent, the Paris Security Agent or the Issuer, as applicable, in consultation with the Principal Certificate Agent (in the case of Euroclear/CBL Certificates, Euroclear France Certificates or Definitive Certificates, as applicable), it shall be deemed to be a new Collection Notice submitted at the time such correction was delivered to Euroclear or Clearstream, Luxembourg, the Principal Certificate Agent, the Paris Security Agent or the Issuer, as

applicable, and copied to the Principal Certificate Agent and Merrill Lynch International (in the case of Euroclear/CBL Certificates and Euroclear France Certificates).

Euroclear or Clearstream, Luxembourg, the Principal Certificate Agent, the Paris Security Agent or the Issuer, as applicable, shall use its best efforts promptly to notify the Holder submitting a Collection Notice if, in consultation with the Principal Certificate Agent (in the case of Euroclear/CBL Certificates and Euroclear France Certificates), it has determined that such Collection Notice is incomplete or not in proper form. In the absence of negligence or wilful misconduct on its part, none of the Issuer, the Guarantor, the Security Agents, Euroclear, Clearstream, Luxembourg or the Principal Certificate Agent shall be liable to any person with respect to any action taken or omitted to be taken by it in connection with such determination or the notification of such determination to a Holder.

*(E) Italian Listed Certificates*

If the Certificates are Italian Listed Certificates, prior to the Renouncement Notice Cut-Off Time, as specified in the applicable Final Terms, the Holder may renounce automatic exercise of such Certificate in accordance with applicable laws and regulations, including the regulations of the Italian Stock Exchange applicable from time to time, by the delivery or sending by fax of a duly completed Renouncement Notice (a "**Renouncement Notice**") to Euroclear and/or Clearstream, Luxembourg in the form and manner from time to time agreed with Euroclear and Clearstream, Luxembourg with a copy to Merrill Lynch International and the Principal Certificate Agent. Once delivered a Renouncement Notice shall be irrevocable.

Any determination as to whether a Renouncement Notice is duly completed and in proper form shall be made by Euroclear and/or Clearstream, Luxembourg (in consultation with Merrill Lynch International and the Principal Certificate Agent) and shall be conclusive and binding on the Issuer, the Guarantor, the Security Agents and the relevant Holder. Subject as set out below, any Renouncement Notice so determined to be incomplete or not in proper form, or which is not copied to Merrill Lynch International and the Principal Certificate Agent immediately after being delivered or sent to Euroclear and/or Clearstream Luxembourg, shall be null and void. If such Renouncement Notice is subsequently corrected to the satisfaction of Euroclear and/or Clearstream, Luxembourg in consultation with Merrill Lynch International and the Principal Certificate Agent, it shall be deemed to be a new Renouncement Notice submitted at the time such correction was delivered to Euroclear and/or Clearstream, Luxembourg with a copy to Merrill Lynch International and the Principal Certificate Agent.

**30. Additional Amounts**

*(A) Calculation of Additional Amounts*

If so specified in the applicable Final Terms, each Certificate pays additional amount from and including the Issue Date at the Additional Amount Rate payable in arrear on each Additional Amount Payment Date.

The additional amount payable in respect of each Certificate on each Additional Amount Payment Date will amount to the Additional Amount for the Additional Amount Period ending on (but excluding) such Additional Amount Payment Date.

If an additional amount is required to be calculated for a period ending other than on (but excluding) an Additional Amount Payment Date, it will be calculated on the basis of the number of days from and including the most recent Additional Amount Payment Date (or, if none, the Issue Date) to but excluding the relevant payment date and the Additional Amount Rate Day Count Fraction.

*(B) Accrual of Additional Amount*

Each Certificate will cease to accrue additional amount from and including the Additional Amount Cut-off Date or, if earlier, the date on which the Certificates are cancelled (the "**Cancellation Date**"), if applicable, in accordance with these Terms and Conditions unless payment of the amount and/or delivery of any Entitlement due on the Settlement Date or Cancellation Date, as the case may be, is improperly withheld or refused or unless default is otherwise made in respect of the payment or

delivery in which case additional amount(s) shall accrue from the date such amount or delivery of such Entitlement was due until such amount or delivery of such Entitlement is paid or delivered, as the case may be,

Provided That if Annex 9 - *Additional Terms and Conditions for Credit Linked Notes and Certificates* applies in respect of the Certificates; and

- (a) "Accrual of Additional Amounts upon Credit Event" is specified as Not Applicable in the applicable Final Terms, each Certificate shall cease to accrue additional amount from the Additional Amount Payment Date or, if applicable, the Additional Amount Cut-off Date, immediately preceding the Credit Event Determination Date, or if the Credit Event Determination Date is an Additional Amount Payment or, if applicable, the Additional Amount Cut-off Date, such date or, if the Credit Event Determination Date falls prior to the first Additional Amount Payment Date or, if applicable, the Additional Amount Cut-off Date, no additional amount shall accrue on the Certificates; or
- (b) "Accrual of Additional Amounts upon Credit Event" is specified as being Applicable in the applicable Final Terms, each Certificate shall cease to accrue additional amounts from the Credit Event Determination Date; and

Provided Further That, if:

- (i) Credit Linked Condition 6 or Credit Linked Condition 7 applies in respect of the Certificates and, in the case of Credit Linked Condition 6, a Repudiation/Moratorium has not occurred on or prior to the Repudiation/Moratorium Evaluation Date or, in the case of Credit Linked Condition 7, a Failure to Pay has not occurred on or prior to the Grace Period Extension Date, as the case may be; and/or
- (ii) Credit Linked Condition 9 applies in respect of the Certificates and the Scheduled Exercise Date, the Grace Period Extension Date or the Repudiation/Moratorium Evaluation Date, as the case may be, is postponed as provided therein,

then additional amounts will accrue as provided in Credit Linked Condition 6, Credit Linked Condition 7 or Credit Linked Condition 9, as the case may be.

For the avoidance of doubt, no additional amount on the Certificates shall accrue beyond the Exercise Date in the event that delivery of any Entitlement is postponed due to the occurrence of a Settlement Disruption Event.

**(C) *Payment of Additional Amounts***

For so long as the Certificates are represented by Definitive Bearer Certificates or Swedish Definitive Certificates, where the Certificates pay additional amount, subject as provided below, against presentation and endorsement of the relevant Definitive Bearer Certificate or Swedish Definitive Certificate, as the case may be, the Issuer or failing the Issuer, the Guarantor shall pay or cause to be paid the Additional Amount for each Certificate in respect of each Additional Amount Payment Date by credit or transfer to an account in the relevant Settlement Currency outside the United States (in accordance with the applicable U.S. Treasury Regulations) specified by the Holder, for value on the relevant Additional Amount Payment Date.

For so long as the Certificates are represented by a Global Certificate, where the Certificates pay additional amounts, subject as provided below, the Issuer or failing the Issuer, the Guarantor shall pay or cause to be paid the Additional Amount for each Certificate in respect of each Additional Amount Payment Date by credit or transfer to the Holder's account with Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France, as the case may be, for value on the relevant Additional Amount Payment Date, such payment to be made in accordance with the rules of Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France, as the case may be.

Except in the case of Swedish Dematerialised Certificates, the Issuer or the Guarantor, as applicable, will be discharged by payment to, or to the order of, Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France, as the case may be, in respect of the amount so paid. Each of the persons shown in the records of Euroclear, Clearstream, Luxembourg, Clearstream,

Frankfurt or Euroclear France, as the case may be, as the holder of a particular amount of the Certificates must look solely to Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France, as the case may be, for his share of each such payment so made to, or to the order of, Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France, as the case may be.

In the case of Swedish Dematerialised Certificates, where the Certificates pay additional amounts, subject as provided below, the Issuer or failing the Issuer, the Guarantor shall pay or cause to be paid the Additional Amount for each Swedish Dematerialised Certificate in respect of each Additional Amount Payment Date by credit or transfer to the person registered as Holder in the Swedish Register on the fifth Business Day prior to the relevant Additional Amount Payment Date (the "Additional Amount Payment Record Date"). The Swedish Security Agent will pay the Additional Amounts through the Swedish CSD to each Holder appearing in the Swedish Register on the Additional Amount Payment Record Date on the relevant Additional Amount Payment Date only to the extent that a U.S. Certification has been provided in accordance with Condition 27 on the Issue Date.

Payments will be subject in all cases to any fiscal or other laws and regulations applicable thereto in the place of payment.

(D) *Definitions*

"30/360 (Floating)" or "360/360" or "Bond Basis" means the number of days in the Additional Amount Period divided by 360, calculated on a formula basis as follows:

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

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Additional Amount Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Additional Amount Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Additional Amount Period, unless such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Additional Amount Period, unless such number would be 31 and D<sub>1</sub> is greater than 29, in which case D<sub>2</sub> will be 30.

"30E/360" or "Eurobond Basis" means the number of days in the Additional Amount Period divided by 360, calculated on a formula basis as follows:

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

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Additional Amount Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Additional Amount Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Additional Amount Period, unless such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Additional Amount Period, unless such number would be 31, in which case D<sub>2</sub> will be 30.

"30E/360 (ISDA)" means the number of days in the Additional Amount Period divided by 360, calculated on a formula basis as follows:

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

where:

"Y<sub>1</sub>" is the year, expressed as a number, in which the first day of the Additional Amount Period falls;

"Y<sub>2</sub>" is the year, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"M<sub>1</sub>" is the calendar month, expressed as a number, in which the first day of the Additional Amount Period falls;

"M<sub>2</sub>" is the calendar month, expressed as a number, in which the day immediately following the last day of the Additional Amount Period falls;

"D<sub>1</sub>" is the first calendar day, expressed as a number, of the Additional Amount Period, unless (a) that day is the last day of February or (b) such number would be 31, in which case D<sub>1</sub> will be 30; and

"D<sub>2</sub>" is the calendar day, expressed as a number, immediately following the last day included in the Additional Amount Period, unless (a) that day is the last day of February but not the Exercise Date or (b) such number would be 31, in which case D<sub>2</sub> will be 30.

"Actual/360" means the actual number of days in the Additional Amount Period divided by 360.

"Actual/Actual (ISDA)" means the actual number of days in the Additional Amount Period divided by 365 (or, if any portion of that Additional Amount Period falls in a leap year, the sum of (a) the actual number of days in that portion of the Additional Amount Period falling in a leap year divided by 366; and (b) the actual number of days in that portion of the Additional Amount Period falling in a non-leap year divided by 365).

"Actual/365 (Fixed)" means the actual number of days in the Additional Amount Period divided by 365.

"Additional Amount" means, in respect of each Certificate and each Additional Amount Period, an amount calculated by the Calculation Agent as follows:

Notional Amount per Certificate x Additional Amount Rate x Additional Amount Rate Day Count Fraction.

"Additional Amount Period" means the period commencing on (and including) the Issue Date to (but excluding) the first Additional Amount Payment Date (or if earlier the Additional Amount Cut-off Date) and each period commencing on (and including) an Additional Amount Payment Date to (but excluding) the next following Additional Amount Payment Date (or if earlier the Additional Amount Cut-off Date).

## **USE OF PROCEEDS OF THE W&C SECURITIES**

### **W&C Securities**

Each Issuer intends to use the net proceeds from each issue of W&C Securities issued by it for its general corporate purposes. A substantial portion of the proceeds from the issue of W&C Securities may be used to hedge market risk with respect to such W&C Securities. If in respect of any particular issue of W&C Securities, there is a particular identified use of proceeds, this will be stated in the applicable Final Terms.



## ANNEX 1

### ADDITIONAL TERMS AND CONDITIONS FOR INDEX LINKED SECURITIES

#### 1. Interpretation

If specified as applicable in the applicable Final Terms, the terms and conditions applicable to Index Linked Notes shall comprise the terms and conditions of the Notes (the "**Note Conditions**") and the Additional Terms and Conditions for Index Linked Securities set out below (the "**Index Linked Conditions**"), in each case subject to completion and/or amendment in the applicable Final Terms. The terms and conditions applicable to Index Linked W&C Securities shall comprise the terms and conditions of the W&C Securities (the "**W&C Securities Conditions**") and the Index Linked Conditions, in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the Note Conditions, in the case of Notes, and the W&C Securities Conditions, in the case of W&C Securities, and the Index Linked Conditions, the Index Linked Conditions shall prevail. In the event of any inconsistency between (i) the Note Conditions or the W&C Securities Conditions and/or the Index Linked Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail. References in the Index Linked Conditions to "Security" and "Securities" shall be deemed to be references to "Note" and "Notes" or "W&C Security" and "W&C Securities" as the context admits.

#### 2. Definitions

For the purposes of these Index Linked Conditions:

**"Averaging Date"** means each date specified as an Averaging Date in the applicable Final Terms or, if any such date is not a Scheduled Trading Day, the immediately following Scheduled Trading Day unless, in the opinion of the Calculation Agent, any such day is a Disrupted Day. If any such day is a Disrupted Day:

- (a) if **"Omission"** is specified as applying in the applicable Final Terms, then such date will be deemed not to be an Averaging Date for the purposes of determining the relevant level or price provided that, if through the operation of this provision there would not be an Averaging Date, then the provisions of the definition of "Valuation Date" will apply for purposes of determining the relevant level or price on the final Averaging Date, as if such Averaging Date were a Valuation Date that was a Disrupted Day; or
- (b) if **"Postponement"** is specified as applying in the applicable Final Terms, then the provisions of the definition of "Valuation Date" will apply for the purposes of determining the relevant level, price or amount on that Averaging Date as if such Averaging Date were a Valuation Date that was a Disrupted Day irrespective of whether, pursuant to such determination, that deferred Averaging Date would fall on a day that already is or is deemed to be an Averaging Date; or
- (c) if **"Modified Postponement"** is specified as applying in the applicable Final Terms then:
  - (i) where the Index Linked Securities relate to a single Index, the Averaging Date shall be the first succeeding Valid Date (as defined below). If the first succeeding Valid Date has not occurred as of the Valuation Time on the eighth Scheduled Trading Day immediately following the original date that, but for the occurrence of another Averaging Date or Disrupted Day, would have been the final Averaging Date in respect of the relevant Scheduled Valuation Date, then (A) that eighth Scheduled Trading Day shall be deemed to be the Averaging Date (irrespective of whether that eighth Scheduled Trading Day is already an Averaging Date), and (B) the Calculation Agent shall determine the relevant level or price for that Averaging Date in accordance with sub-paragraph (a)(ii) of the definition of "Valuation Date" below; and
  - (ii) where the Index Linked Securities relate to a Basket of Indices, the Averaging Date for each Index not affected by the occurrence of a Disrupted Day shall be the originally designated Averaging Date (the "**Scheduled Averaging Date**") and the

Averaging Date for an Index affected by the occurrence of a Disrupted Day shall be the first succeeding Valid Date (as defined below) in relation to such Index. If the first succeeding Valid Date in relation to such Index has not occurred as of the Valuation Time on the eighth Scheduled Trading Day immediately following the original date that, but for the occurrence of another Averaging Date or Disrupted Day, would have been the final Averaging Date, then (A) that eighth Scheduled Trading Day shall be deemed to be the Averaging Date (irrespective of whether that eighth Scheduled Trading Day is already an Averaging Date) in relation to such Index, and (B) the Calculation Agent shall determine the relevant level or price for that Averaging Date in accordance with sub-paragraph (b)(ii) of the definition of "Valuation Date" below,

for the purposes of these Index Linked Conditions "**Valid Date**" means a Scheduled Trading Day that is not a Disrupted Day and on which another Averaging Date does not or is deemed not to occur.

**"Component Security"** means, in respect of a Multi-Exchange Index, each component security in such Index.

**"Disrupted Day"** means (a) where the relevant Index is not specified in the applicable Final Terms to be a Multi-Exchange Index, any Scheduled Trading Day on which a relevant Exchange or any Related Exchange fails to open for trading during its regular trading session or on which a Market Disruption Event has occurred or (b) where the relevant Index is specified in the applicable Final Terms to be a Multi-Exchange Index, any Scheduled Trading Day on which (i) the Index Sponsor fails to publish the level of the Index, (ii) the Related Exchange fails to open for trading during its regular trading session or (iii) a Market Disruption Event has occurred.

**"Early Closure"** means:

- (a) in relation to an Index which is not specified in the applicable Final Terms as being a Multi-Exchange Index, the closure on any Exchange Business Day of any relevant Exchange(s) relating to securities that comprise 20 per cent. or more of the level of the relevant Index or any Related Exchange(s) prior to its Scheduled Closing Time unless such earlier closing time is announced by such Exchange(s) or Related Exchange(s) at least one hour prior to the earlier of (i) the actual closing time for the regular trading session on such Exchange(s) or Related Exchange(s) on such Exchange Business Day and (ii) the submission deadline for orders to be entered into the Exchange or Related Exchange system for execution at the Valuation Time on such Exchange Business Day; or
- (b) in relation to an Index which is specified in the applicable Final Terms as being a Multi-Exchange Index, the closure on any Exchange Business Day of the Exchange in respect of any Component Security or the Related Exchange prior to its Scheduled Closing Time unless such earlier closing is announced by such Exchange or Related Exchange, as the case may be, at least one hour prior to the earlier of (a) the actual closing time for the regular trading session on such Exchange or Related Exchange, as the case may be, on such Exchange Business Day, or (b) the submission deadline for orders to be entered into on the relevant Exchange or Related Exchange system for execution at the relevant Valuation Time on such Exchange Business Day.

**"Exchange"** means:

- (a) in relation to an Index which is not specified in the applicable Final Terms as being a Multi-Exchange Index, each exchange or quotation system specified as such for such Index in the applicable Final Terms, any successor to such exchange or quotation system or any substitute exchange or quotation system to which trading in the securities comprising such Index has temporarily relocated (provided that the Calculation Agent has determined that there is comparable liquidity relative to the securities comprising such Index on such temporary substitute exchange or quotation system as on the original Exchange); and

- (b) in relation to an Index which is specified in the applicable Final Terms as being a Multi-Exchange Index, in respect of each Component Security, the principal stock exchange on which such Component Security is principally traded, as determined by the Calculation Agent.

**"Exchange Business Day"** means (a) where the relevant Index is not specified in the applicable Final Terms to be a Multi-Exchange Index, any Scheduled Trading Day on which each Exchange and each Related Exchange are open for trading during their respective regular trading sessions, notwithstanding any such Exchange or Related Exchange closing prior to its Scheduled Closing Time or (b) where the relevant Index is specified in the applicable Final Terms to be a Multi-Exchange Index, any Scheduled Trading Day on which (i) the Index Sponsor publishes the level of the Index; and (ii) the Related Exchange is open for trading during its regular trading session, notwithstanding the Related Exchange closing prior to its Scheduled Closing Time.

**"Exchange Disruption"** means:

- (a) in relation to an Index which is not specified in the applicable Final Terms as being a Multi-Exchange Index, any event (other than an Early Closure) that disrupts or impairs (as determined by the Calculation Agent) the ability of market participants in general (i) to effect transactions in, or obtain market values for, on any relevant Exchange(s) in securities that comprise 20 per cent. or more of the level of the relevant Index, or (ii) to effect transactions in, or obtain market values for, futures or options contracts relating to the relevant Index on any relevant Related Exchange; or
- (b) in relation to an Index which is specified in the applicable Final Terms as being a Multi-Exchange Index, any event (other than an Early Closure) that disrupts or impairs (as determined by the Calculation Agent) the ability of market participants in general to effect transactions in, or obtain market values for: (i) any Component Security on the Exchange in respect of such Component Security; or (ii) futures or options contracts relating to the Index on the relevant Related Exchange.

**"Index"** and **"Indices"** mean, subject to adjustment in accordance with the Index Linked Conditions, the indices or index specified in the applicable Final Terms and related expressions shall be construed accordingly.

**"Index Closing Level"** means, in respect of an Index and subject to these Index Linked Conditions and to "Valuation Date", "Observation Date" below and "Averaging Date" above, as the case may be, an amount equal to the official closing level (which shall be deemed to be an amount in the Index Currency) of such Index as determined by the Calculation Agent on (i) if Averaging is not specified in the applicable Final Terms, the Valuation Date or an Observation Date, as the case may be, or (ii) if Averaging is specified in the applicable Final Terms, an Averaging Date converted, if Exchange Rate is specified as applicable in the applicable Final Terms, into the Specified Currency at the Exchange Rate.

**"Index Level"** means, in respect of an Index and a time on a Scheduled Trading Day and subject to these Index Linked Conditions, the level of such Index at such time on such day as determined by the Calculation Agent.

**"Index Performance"** means the Index Performance specified in the applicable Final Terms.

**"Index Sponsor"** means, in relation to an Index, the corporation or other entity that (i) is responsible for setting and reviewing the rules and procedures and the methods of calculation and adjustments, if any, related to such Index and (ii) announces (directly or through an agent) the level of such Index on a regular basis during each Scheduled Trading Day, which as of the Issue Date is the index sponsor specified for such Index in the applicable Final Terms.

**"Observation Cut-Off Date"** means the eighth Scheduled Trading Day immediately following the Scheduled Observation Date or if earlier the Scheduled Trading Day falling on or immediately preceding the second Business Day immediately preceding the date of payment of any amount calculated in respect of such Observation Date pursuant to the definition of Observation Date.

**"Observation Date"** means each Observation Date specified in the applicable Final Terms, or if such date is not a Scheduled Trading Day the first Scheduled Trading Day thereafter unless, in the opinion of the Calculation Agent such day is a Disrupted Day. If any such day is a Disrupted Day, then:

- (a) where the Index Linked Securities relate to a single Index, that Observation Date shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day, unless each of the Scheduled Trading Days immediately following the Scheduled Observation Date up to and including the Observation Cut-Off Date is a Disrupted Day. In that case, (i) the Observation Cut-Off Date shall be deemed to be that Observation Date (notwithstanding the fact that such day is a Disrupted Day) and (ii) the Calculation Agent shall determine the relevant level or price in the manner set out in the applicable Final Terms or, if not set out or if not practicable, determine the relevant level or price by determining the level of the Index as of the Valuation Time on the Observation Cut-Off Date in accordance with (subject to Index Linked Condition 4 below) the formula for and method of calculating the Index last in effect prior to the occurrence of the first Disrupted Day using the Exchange traded or quoted price as of the Valuation Time on the Observation Cut-Off Date of each security comprised in the Index (or, if an event giving rise to a Disrupted Day has occurred in respect of the relevant security on the Observation Cut-Off Date, its good faith estimate of the value for the relevant security as of the Valuation Time on the Observation Cut-Off Date); or
- (b) where the Index Linked Securities relate to a Basket of Indices, that Observation Date for each Index not affected by the occurrence of a Disrupted Day shall be the Scheduled Observation Date and that Observation Date for each Index affected (each an **"Affected Index"**) by the occurrence of a Disrupted Day shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day relating to the Affected Index, unless each of the Scheduled Trading Days immediately following the Scheduled Observation Date up to and including the Observation Cut-Off Date is a Disrupted Day relating to the Affected Index. In that case, (i) the Observation Cut-Off Date shall be deemed to be that Observation Date for the Affected Index (notwithstanding the fact that such day is a Disrupted Day) and (ii) the Calculation Agent shall determine the relevant level or price using, in relation to the Affected Index, the level of that Index determined in the manner set out in the applicable Final Terms or, if not set out or if not practicable, using the level of that Index as of the Valuation Time on the Observation Cut-Off Date in accordance with (subject to Index Linked Condition 4) the formula for and method of calculating that Index last in effect prior to the occurrence of the first Disrupted Day using the Exchange traded or quoted price as of the Valuation Time on the Observation Cut-Off Date of each security comprised in that Index (or, if an event giving rise to a Disrupted Day has occurred in respect of the relevant security on the Observation Cut-Off Date, its good faith estimate of the value for the relevant security as of the Valuation Time on the Observation Cut-Off Date).

**"Related Exchange"** means, in relation to an Index, each exchange or quotation system specified as such for such Index in the applicable Final Terms, any successor to such exchange or quotation system or any substitute exchange or quotation system to which trading in futures or options contracts relating to such Index has temporarily relocated (provided that the Calculation Agent has determined that there is comparable liquidity relative to the futures or options contracts relating to such Index on such temporary substitute exchange or quotation system as on the original Related Exchange), provided, however, that where "All Exchanges" is specified as the Related Exchange in the applicable Final Terms, **"Related Exchange"** shall mean each exchange or quotation system where trading has a material effect (as determined by the Calculation Agent) on the overall market for futures or options contracts relating to such Index.

**"Scheduled Closing Time"** means, in respect of an Exchange or Related Exchange and a Scheduled Trading Day, the scheduled weekday closing time of such Exchange or Related Exchange on such Scheduled Trading Day, without regard to after hours or any other trading outside of the regular trading session hours.

**"Scheduled Trading Day"** means (a) where the relevant Index is not specified in the applicable Final Terms to be a Multi-Exchange Index, any day on which each Exchange and each Related Exchange are scheduled to be open for trading for their respective regular trading sessions or (b) where the relevant Index is specified in the applicable Final Terms to be a Multi-Exchange Index, any day on which (i) the Index Sponsor is scheduled to publish the level of that Index, and (ii) the Related Exchange is scheduled to be open for trading for its regular trading session.

**"Scheduled Observation Date"** means any original date that, but for the occurrence of an event causing a Disrupted Day, would have been an Observation Date.

**"Scheduled Valuation Date"** means any original date that, but for the occurrence of an event causing a Disrupted Day, would have been a Valuation Date.

**"Trading Disruption"** means:

- (a) in relation to an Index which is not specified in the applicable Final Terms as being a Multi-Exchange Index, any suspension of or limitation imposed on trading by the relevant Exchange or Related Exchange or otherwise and whether by reason of movements in price exceeding limits permitted by the relevant Exchange or Related Exchange or otherwise (i) on any relevant Exchange(s) relating to securities that comprise 20 per cent. or more of the level of the relevant Index, or (ii) in futures or options contracts relating to the Index on any relevant Related Exchange;
- (b) in relation to an Index which is specified in the applicable Final Terms as being a Multi-Exchange Index, any suspension of or limitation imposed on trading by the relevant Exchange or Related Exchange or otherwise and whether by reason of movements in price exceeding limits permitted by the relevant Exchange or Related Exchange or otherwise: (i) relating to any Component Security on the Exchange in respect of such Component Security; or (ii) in futures or options contracts relating to the Index on the Related Exchange.

**"Valuation Cut-Off Date"** means the eighth Scheduled Trading Day immediately following the Scheduled Valuation Date or if earlier the Scheduled Trading Day falling on or immediately preceding the second Business Day immediately preceding the date of payment of any amount calculated pursuant to the definition of Valuation Date.

**"Valuation Date"** means (x) in the case of Notes, each Valuation Date specified in the applicable Final Terms or (y) in the case of W&C Securities, the Actual Exercise Date of the relevant W&C Security, or in either case if such date is not a Scheduled Trading Day the first Scheduled Trading Day thereafter unless, in the opinion of the Calculation Agent such day is a Disrupted Day. If such day is a Disrupted Day, then:

- (a) where the Index Linked Securities relate to a single Index, the Valuation Date shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day, unless each of the Scheduled Trading Days immediately following the Scheduled Valuation Date up to and including the Valuation Cut-Off Date is a Disrupted Day. In that case, (i) the Valuation Cut-Off Date shall be deemed to be the Valuation Date (notwithstanding the fact that such day is a Disrupted Day) and (ii) the Calculation Agent shall determine the relevant level or price in the manner set out in the applicable Final Terms or, if not set out or if not practicable, determine the relevant level or price by determining the level of the Index as of the Valuation Time on the Valuation Cut-Off Date in accordance with (subject to Index Linked Condition 4 below) the formula for and method of calculating the Index last in effect prior to the occurrence of the first Disrupted Day using the Exchange traded or quoted price as of the Valuation Time on the Valuation Cut-Off Date of each security comprised in the Index (or, if an event giving rise to a Disrupted Day has occurred in respect of the relevant security on the Valuation Cut-Off Date, its good faith estimate of the value for the relevant security as of the Valuation Time on the Valuation Cut-Off Date); or
- (b) where the Index Linked Securities relate to a Basket of Indices, the Valuation Date for each Index not affected by the occurrence of a Disrupted Day shall be the Scheduled Valuation

Date and the Valuation Date for each Index affected (each an "Affected Index") by the occurrence of a Disrupted Day shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day relating to the Affected Index, unless each of the Scheduled Trading Days immediately following the Scheduled Valuation Date up to and including the Valuation Cut-Off Date is a Disrupted Day relating to the Affected Index. In that case, (i) the Valuation Cut-Off Date shall be deemed to be the Valuation Date for the Affected Index (notwithstanding the fact that such day is a Disrupted Day) and (ii) the Calculation Agent shall determine the relevant level or price using, in relation to the Affected Index, the level of that Index determined in the manner set out in the applicable Final Terms or, if not set out or if not practicable, using the level of that Index as of the Valuation Time on the Valuation Cut-Off Date in accordance with (subject to Index Linked Condition 4) the formula for and method of calculating that Index last in effect prior to the occurrence of the first Disrupted Day using the Exchange traded or quoted price as of the Valuation Time on the Valuation Cut-Off Date of each security comprised in that Index (or, if an event giving rise to a Disrupted Day has occurred in respect of the relevant security on the Valuation Cut-Off Date, its good faith estimate of the value for the relevant security as of the Valuation Time on the Valuation Cut-Off Date).

**"Valuation Time"** means:

- (a) where the relevant Index is not specified in the applicable Final Terms to be a Multi-Exchange Index, the Valuation Time specified in the applicable Final Terms or, if no Valuation Time is specified, the Scheduled Closing Time on the relevant Exchange on the relevant Valuation Date, Observation Date or Averaging Date, as the case may be, in relation to each Index to be valued. If the relevant Exchange closes prior to its Scheduled Closing Time and the specified Valuation Time is after the actual closing time for its regular trading session, then the Valuation Time shall be such actual closing time; or
- (b) where the relevant Index is specified in the applicable Final Terms to be a Multi-Exchange Index, the Valuation Time specified in the applicable Final Terms or if no Valuation Time is specified (i) for the purposes of determining whether a Market Disruption Event has occurred: (x) in respect of any Component Security, the Scheduled Closing Time on the relevant Exchange and (y) in respect of any options contracts or futures contracts on the Index, the close of trading on the relevant Related Exchange, and (ii) in all other circumstances, the time at which the official closing level of the Index is calculated and published by the Index Sponsor.

### 3. **Market Disruption**

**"Market Disruption Event"** means:

- (a) in respect of an Index other than a Multi-Exchange Index:
- (b) the occurrence or existence of (i) a Trading Disruption, (ii) an Exchange Disruption, which in either case the Calculation Agent determines is material, at any time during the one hour period that ends at the relevant Valuation Time or (iii) an Early Closure; or in respect of an Index which is a Multi-Exchange Index either:
  - (i) (A) the occurrence or existence, in respect of any Component Security, of:
    - I. a Trading Disruption, which the Calculation Agent determines is material, at any time during the one hour period that ends at the relevant Valuation Time in respect of the Exchange on which such Component Security is principally traded;
    - II. an Exchange Disruption, which the Calculation Agent determines is material, at any time during the one hour period that ends at the relevant Valuation Time in respect of the Exchange on which such Component Security is principally traded; or

- III. an Early Closure; and
- (B) the aggregate of all Component Securities in respect of which a Trading Disruption, an Exchange Disruption or an Early Closure occurs or exists, comprises 20 per cent. or more of the level of the Index; or
- (ii) the occurrence or existence, in respect of futures or options contracts relating to the Index, of (A) a Trading Disruption, (B) an Exchange Disruption which in either case the Calculation Agent determines is material, at any time during the one hour period that ends at the Valuation Time in respect of the Related Exchange or (C) an Early Closure.

For the purposes of determining whether a Market Disruption Event in respect of an Index exists at any time, if a Market Disruption Event occurs in respect of a security included in the Index or such Component Security at any time, then the relevant percentage contribution of that security or Component Security, as the case may be, to the level of the Index shall be based on a comparison of (i) the portion of the level of the Index attributable to that security or Component Security, as the case may be, and (ii) the overall level of the Index, in each case either (a) except where the Index is not a Multi-Exchange Index, immediately before the occurrence of such Market Disruption Event or (b) where that Index is a Multi-Exchange Index, using the official opening weightings as published by the Index Sponsor as part of the market "opening data".

#### 4. Adjustments and Corrections to an Index

##### (a) Successor Index Sponsor Calculates and Reports an Index

If a relevant Index is (i) not calculated and announced by the Index Sponsor but is calculated and announced by a successor sponsor (the "**Successor Index Sponsor**") acceptable to the Calculation Agent, or (ii) replaced by a successor index using, in the determination of the Calculation Agent, the same or a substantially similar formula for and method of calculation as used in the calculation of that Index, then in each case that index (the "**Successor Index**") will be deemed to be the Index.

##### (b) Modification and Cessation of Calculation of an Index

If (i) on or prior to a Valuation Date, an Observation Date or an Averaging Date the relevant Index Sponsor makes or announces that it will make a material change in the formula for or the method of calculating a relevant Index or in any other way materially modifies that Index (other than a modification prescribed in that formula or method to maintain that Index in the event of changes in constituent stock and capitalisation or contracts and other routine events) (an "**Index Modification**"), or permanently cancels a relevant Index and no Successor Index exists (an "**Index Cancellation**"), or (ii) on a Valuation Date, an Observation Date or an Averaging Date the Index Sponsor or, if applicable, the Successor Index Sponsor fails to calculate and announce a relevant Index (an "**Index Disruption**" and, together with an Index Modification and an Index Calculation, each an "**Index Adjustment Event**"), then the Issuer may take the action described in (A) or (B) below:

- (A) require the Calculation Agent to determine if such Index Adjustment Event has a material effect on the Index Linked Securities and, if so, calculate the relevant level or price using, in lieu of a published level for that Index, the level for that Index as at the Valuation Time on that Valuation Date, Observation Date or Averaging Date, as the case may be, as determined by the Calculation Agent in accordance with the formula for and method of calculating that Index last in effect prior to the change, failure or cancellation, but using only those securities that comprised that Index immediately prior to that Index Adjustment Event; or
- (B)
  - (x) in the case of Notes, on giving notice to the Noteholders in accordance with Note Condition 13, redeem all (but not some only) of the Notes, each Note being redeemed at the Early Redemption Amount; or
  - (y) in the case of W&C Securities, on giving notice to Holders in accordance with W&C Securities Condition 10, cancel the Index Linked W&C Securities. If the Index

Linked W&C Securities are so cancelled the Issuer will pay an amount to each Holder in respect of each W&C Security or Unit, as the case may be, held by him which amount shall be the fair market value of a Index W&C Security or a Unit, as the case may be, taking into account the Index Adjustment Event, less the cost to the Issuer and/or any of its Affiliates or agents of unwinding any underlying related hedging arrangements (including any cost of funding in respect of such hedging arrangements), all as determined by the Calculation Agent in its sole and absolute discretion. Payments will be made in such manner as shall be notified to the Holders in accordance with W&C Securities Condition 10.

Upon the occurrence of an Index Adjustment Event, the Issuer shall give notice as soon as reasonably practicable to the Holders in accordance with Note Condition 13 or Holders in accordance with W&C Securities Condition 10, as applicable, giving details of the action proposed to be taken in relation thereto, Provided That any failure to give, or non-receipt of, such notice will not affect the validity of such action. The Issuer shall make available for inspection by Holders copies of any such determinations.

(c) **Corrections to an Index**

If the level of a relevant Index published on any Valuation Date, Observation Date or Averaging Date, as the case may be, by the relevant Index Sponsor or (if applicable) the relevant Successor Index Sponsor and which is utilised for any calculation or determination made for the purposes of the Index Linked Securities (a "**Relevant Calculation**") is subsequently corrected and the correction (the "**Corrected Index Level**") published by the relevant Index Sponsor or (if applicable) the relevant Successor Index Sponsor no later than two Business Days prior to the date of payment of any amount to be calculated by reference to the Relevant Calculation then such Corrected Index Level shall be deemed to be the relevant level for such Index on such Averaging Date, Observation Date or Valuation Date, as the case may be, and the Calculation Agent shall use such Corrected Index Level in determining the relevant level or price.

**5. Additional Disruption Events**

(a) **"Additional Disruption Event"** means any of Change of Law, Hedging Disruption and/or Increased Cost of Hedging, in each case if specified in the applicable Final Terms.

**"Change in Law"** means that, on or after the Trade Date (as specified in the applicable Final Terms) (i) due to the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law), or (ii) due to the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), the Calculation Agent determines in its sole and absolute discretion that (A) it has become illegal to hold, acquire or dispose of any relevant security comprised in an Index or (B) the Issuer will incur a materially increased cost in performing its obligations in relation to the Index Linked Securities (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on the tax position of the Issuer and/or any of its affiliates).

**"Hedging Disruption"** means that the Issuer and/or any of its Affiliates or agents is unable, after using commercially reasonable efforts, to (i) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity or other price risk of the Issuer issuing and performing its obligations with respect to the Index Linked Securities, or (ii) realise, recover or remit the proceeds of any such transaction(s) or asset(s).

**"Increased Cost of Hedging"** means that the Issuer and/or any of its Affiliates or agents acting on its behalf would incur a materially increased (as compared with circumstances existing on the Trade Date) amount of tax, duty, expense or fee (other than brokerage commissions) to (i) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity or other price risk of the Issuer issuing and performing its obligations with respect to the Index Linked Securities, or (ii) realise, recover or remit the proceeds of any such transaction(s) or asset(s), provided that any such materially increased amount that is



incurred solely due to the deterioration of the creditworthiness of the Issuer and/or any of its Affiliates or agents shall not be deemed an Increased Cost of Hedging.

- (b) If Additional Disruption Events are specified as applicable in the applicable Final Terms, then if an Additional Disruption Event occurs, the Issuer in its sole and absolute discretion may take the action described in (i) or (ii) below:
- (i) require the Calculation Agent to determine in its sole and absolute discretion the appropriate adjustment, if any, to be made to any one or more of the terms of these Terms and Conditions and/or the applicable Final Terms to account for the Additional Disruption Event and determine the effective date of that adjustment; or
  - (ii) give notice to Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, and (A) in the case of Notes, redeem all, but not some only, of the Notes, each nominal amount of Notes equal to the Calculation Amount being redeemed at the Early Redemption Amount; or (B) in the case of W&C Securities, cancel the W&C Securities and pay an amount to each Holder in respect of each W&C Security or Unit, as the case may be, held by him which amount shall be the fair market value of a W&C Security or a Unit, as the case may be, taking into account the Additional Disruption Event less the cost to the Issuer and/or any of its Affiliates or agents of unwinding any underlying related hedging arrangements (including any cost of funding in respect of such hedging arrangements) plus, in the case of Warrants, if already paid, the Exercise Price, all as determined by the Calculation Agent in its sole and absolute discretion, payment being made in such manner as shall be notified to the Holders in accordance with W&C Securities Condition 10.
- (c) Upon the occurrence of an Additional Disruption Event, the Issuer shall give notice as soon as practicable to the Holders stating the occurrence of the Additional Disruption Event, giving details thereof and the action proposed to be taken in relation thereto Provided That any failure to give, or non-receipt of, such notice will not affect the validity of the Additional Disruption Event.

## ANNEX 2

### ADDITIONAL TERMS AND CONDITIONS FOR SHARE LINKED SECURITIES

#### 1. Interpretation

If specified as applicable in the applicable Final Terms, the terms and conditions applicable to Share Linked Notes shall comprise the terms and conditions of the Notes (the "**Note Conditions**") and the Additional Terms and Conditions for Share Linked Securities set out below (the "**Share Linked Conditions**"), in each case subject to completion and/or amendment in the applicable Final Terms. The terms and conditions applicable to Share Linked W&C Securities shall comprise the terms and conditions of the W&C Securities (the "**W&C Securities Conditions**") and the Share Linked Conditions, in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the Note Conditions, in the case of Notes, and the W&C Securities Conditions, in the case of W&C Securities, and the Share Linked Conditions, the Share Linked Conditions shall prevail. In the event of any inconsistency between (i) the Note Conditions or the W&C Securities Conditions and the Share Linked Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail. References in the Share Linked Conditions to "Security" and "Securities" shall be deemed to be references to "Note" and "Notes" or "W&C Security" and "W&C Securities" as the context admits.

#### 2. Definitions

For the purposes of these Share Linked Conditions:

**"Averaging Date"** means each date specified as an Averaging Date in the applicable Final Terms or, if any such date is not a Scheduled Trading Day, the immediately following Scheduled Trading Day unless, in the opinion of the Calculation Agent, any such day is a Disrupted Day. If any such day is a Disrupted Day:

- (a) if "**Omission**" is specified as applying in the applicable Final Terms, then such date will be deemed not to be an Averaging Date for the purposes of determining the relevant price; provided that, if through the operation of this provision there would not be an Averaging Date, then the provisions of the definition of "Valuation Date" will apply for purposes of determining the relevant level or price on the final Averaging Date, as if such Averaging Date were a Valuation Date that was a Disrupted Day; or
- (b) if "**Postponement**" is specified as applying in the applicable Final Terms, then the provisions of the definition of "Valuation Date" will apply for the purposes of determining the relevant price on that Averaging Date as if such Averaging Date were a Valuation Date that was a Disrupted Day irrespective of whether, pursuant to such determination, that deferred Averaging Date would fall on a day that already is or is deemed to be an Averaging Date; or
- (c) if "**Modified Postponement**" is specified as applying in the applicable Final Terms then:
  - (i) where the Share Linked Securities relate to a single Share, the Averaging Date shall be the first succeeding Valid Date (as defined below). If the first succeeding Valid Date has not occurred as of the Valuation Time on the eighth Scheduled Trading Day immediately following the original date that, but for the occurrence of another Averaging Date or Disrupted Day, would have been the final Averaging Date, then (A) that eighth Scheduled Trading Day shall be deemed to be the Averaging Date (irrespective of whether that eighth Scheduled Trading Day is already an Averaging Date), and (B) the Calculation Agent shall determine the relevant price for that Averaging Date in accordance with sub-paragraph (a)(ii) of the definition of "Valuation Date" below; and
  - (ii) where the Share Linked Securities relate to a Basket of Shares, the Averaging Date for each Share not affected by the occurrence of a Disrupted Day shall be the originally designated Averaging Date (the "**Scheduled Averaging Date**") and the

Averaging Date for a Share affected by the occurrence of a Disrupted Day shall be the first succeeding Valid Date (as defined below) in relation to such Share. If the first succeeding Valid Date in relation to such Share has not occurred as of the Valuation Time on the eighth Scheduled Trading Day immediately following the original date that, but for the occurrence of another Averaging Date or Disrupted Day, would have been the final Averaging Date, then (A) that eighth Scheduled Trading Day shall be deemed to be the Averaging Date (irrespective of whether that eighth Scheduled Trading Day is already an Averaging Date) in relation to such Share, and (B) the Calculation Agent shall determine the relevant price for that Averaging Date in accordance with sub-paragraph (b)(ii) of the definition of "Valuation Date" below,

for the purposes of these Share Linked Conditions **"Valid Date"** means a Scheduled Trading Day that is not a Disrupted Day and on which another Averaging Date does not or is deemed not to occur.

**"Disrupted Day"** means any Scheduled Trading Day on which a relevant Exchange or any Related Exchange fails to open for trading during its regular trading session or on which a Market Disruption Event has occurred.

**"Early Closure"** means the closure on any Exchange Business Day of the relevant Exchange or any Related Exchange(s) prior to its Scheduled Closing Time unless such earlier closing time is announced by such Exchange(s) or Related Exchange(s) at least one hour prior to the earlier of (i) the actual closing time for the regular trading session on such Exchange(s) or Related Exchange(s) on such Exchange Business Day, and (ii) the submission deadline for orders to be entered into the Exchange or Related Exchange system for execution at the Valuation Time on such Exchange Business Day.

**"Exchange"** means, in relation to a Share, each exchange or quotation system specified as such for such Share in the applicable Final Terms, any successor to such exchange or quotation system or any substitute exchange or quotation system to which trading in the Share has temporarily relocated (provided that the Calculation Agent has determined that there is comparable liquidity relative to such Share on such temporary substitute exchange or quotation system as on the original Exchange).

**"Exchange Business Day"** means any Scheduled Trading Day on which each Exchange and each Related Exchange are open for trading during their respective regular trading sessions, notwithstanding any such Exchange or Related Exchange closing prior to its Scheduled Closing Time.

**"Exchange Disruption"** means any event (other than an Early Closure) that disrupts or impairs (as determined by the Calculation Agent) the ability of market participants in general (i) to effect transactions in, or obtain market values for, the Shares on the Exchange or (ii) to effect transactions in, or obtain market values for, futures or options contracts relating to the Share on any relevant Related Exchange.

**"Observation Cut-Off Date"** means the eighth Scheduled Trading Day immediately following the Scheduled Observation Date or if earlier the Scheduled Trading Day falling on or immediately preceding the second Business Day immediately preceding the date of payment of any amount calculated in respect of such Observation Date pursuant to the definition of Observation Date.

**"Observation Date"** means each date specified as such in the applicable Final Terms, or if such date is not a Scheduled Trading Day the first Scheduled Trading Day thereafter unless, in the opinion of the Calculation Agent such day is a Disrupted Day. If any such day is a Disrupted Day, then:

- (a) where the Share Linked Securities relate to a single Share, that Observation Date shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day, unless each of the Scheduled Trading Days immediately following the Scheduled Observation Date up to and including the Observation Cut-Off Date is a Disrupted Day. In that case, (i) the Observation Cut-Off Date shall be deemed to be that Observation Date (notwithstanding the fact that such day is a Disrupted Day) and (ii) the Calculation Agent shall determine the relevant

price in the manner set out in the applicable Final Terms or, if not set out or if not practicable, determine the relevant price in accordance with its good faith estimate of the relevant price as of the Valuation Time on the Observation Cut-Off Date; or

- (b) where the Share Linked Securities relate to a Basket of Shares, that Observation Date for each Share not affected by the occurrence of a Disrupted Day shall be the Scheduled Observation Date and that Observation Date for each Share affected (each an **"Affected Share"**) by the occurrence of a Disrupted Day shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day relating to the Affected Share, unless each of the Scheduled Trading Days immediately following the Scheduled Observation Date up to and including the Observation Cut-Off Date is a Disrupted Day relating to the Affected Share. In that case, (i) the Observation Cut-Off Date shall be deemed to be that Observation Date for the Affected Share (notwithstanding the fact that such day is a Disrupted Day) and (ii) the Calculation Agent shall determine the relevant price using, in relation to the Affected Share, a price determined in the manner set out in the applicable Final Terms or, if not set out or if not practicable, using its good faith estimate of the price for the Affected Share as of the Valuation Time on the Observation Cut-Off Date, and otherwise in accordance with the above provisions.

**"Related Exchange"** means, in relation to a Share, each exchange or quotation system specified as such for such Share in the applicable Final Terms, any successor to such exchange or quotation system or any substitute exchange or quotation system to which trading in futures or options contracts relating to such Share has temporarily relocated (provided that the Calculation Agent has determined that there is comparable liquidity relative to the futures or options contracts relating to such Share on such temporary substitute exchange or quotation system as on the original Related Exchange), provided, however, that where **"All Exchanges"** is specified as the Related Exchange in the applicable Final Terms, **"Related Exchange"** shall mean each exchange or quotation system where trading has a material effect (as determined by the Calculation Agent) on the overall market for futures or options contracts relating to such Share.

**"Scheduled Closing Time"** means, in respect of an Exchange or Related Exchange and a Scheduled Trading Day, the scheduled weekday closing time of such Exchange or Related Exchange on such Scheduled Trading Day, without regard to after hours or any other trading outside of the regular trading session hours.

**"Scheduled Observation Date"** means any original date that, but for the occurrence of an event causing a Disrupted Day, would have been an Observation Date.

**"Scheduled Trading Day"** means any day on which each Exchange and each Related Exchange are scheduled to be open for trading for their respective regular trading sessions.

**"Scheduled Valuation Date"** means any original date that, but for the occurrence of an event causing a Disrupted Day, would have been a Valuation Date.

**"Shares"** and **"Share"** mean, subject to adjustment in accordance with these Share Linked Conditions, the shares or a share specified in the applicable Final Terms and related expressions shall be construed accordingly.

**"Share Closing Price"** means, in respect of a Share and subject to these Share Linked Conditions and to **"Valuation Date"** below and **"Averaging Date"** or **"Observation Date"** above, as the case may be, an amount equal to the official closing price of such Share quoted on the relevant Exchange as determined by the Calculation Agent on (A) if Averaging is not specified in the applicable Final Terms, the Valuation Date or an Observation Date, as the case may be, or (B) if Averaging is specified in the applicable Final Terms, an Averaging Date converted, if Exchange Rate is specified as applicable in the applicable Final Terms, into the Specified Currency at the Exchange Rate.

**"Share Company"** means, in respect of a Share, the company that has issued such Share.

**"Share Performance"** means the Share Performance specified in the applicable Final Terms.

**"Share Price"** means, in respect of a Share and a time on a Scheduled Trading Day and subject to these Share Linked Conditions, the price of such Share at such time on such day as determined by the Calculation Agent.

**"Trading Disruption"** means any suspension of or limitation imposed on trading by the relevant Exchange or Related Exchange or otherwise and whether by reason of movements in price exceeding limits permitted by the relevant Exchange or Related Exchange or otherwise (i) relating to the Share on the Exchange or (ii) in futures or options contracts relating to the Share on any relevant Related Exchange.

**"Valuation Cut-Off Date"** means the eighth Scheduled Trading Day immediately following the Scheduled Valuation Date or if earlier the Scheduled Trading Day falling on or immediately preceding the second Business Day immediately preceding the date of payment of any amount calculated pursuant to the definition of Valuation Date.

**"Valuation Date"** means (x) in the case of Notes, each Valuation Date specified in the applicable Final Terms or (y) in the case of W&C Securities, the Actual Exercise Date of the relevant W&C Security, or in either case if that is not a Scheduled Trading Day the first Scheduled Trading Day thereafter unless, in the opinion of the Calculation Agent such day is a Disrupted Day. If such day is a Disrupted Day, then:

- (a) where the Share Linked Securities relate to a single Share, the Valuation Date shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day, unless each of the Scheduled Trading Days up to and including the Valuation Cut-Off Date is a Disrupted Day. In that case, (i) the Valuation Cut-Off Date shall be deemed to be the Valuation Date (notwithstanding the fact that such day is a Disrupted Day) and (ii) the Calculation Agent shall determine the relevant price in the manner set out in the applicable Final Terms or, if not set out or if not practicable, determine the relevant price in accordance with its good faith estimate of the relevant price as of the Valuation Time on the Valuation Cut-Off Date; or
- (b) where the Share Linked Securities relate to a Basket of Shares, the Valuation Date for each Share not affected by the occurrence of a Disrupted Day shall be the Scheduled Valuation Date and the Valuation Date for each Share affected (each an **"Affected Share"**) by the occurrence of a Disrupted Day shall be the first succeeding Scheduled Trading Day that is not a Disrupted Day relating to the Affected Share, unless each of the Scheduled Trading Days immediately following the Scheduled Valuation Date up to and including the Valuation Cut-Off Date is a Disrupted Day relating to the Affected Share. In that case, (i) the Valuation Cut-Off Date shall be deemed to be the Valuation Date for the Affected Share (notwithstanding the fact that such day is a Disrupted Day) and (ii) the Calculation Agent shall determine the relevant price using, in relation to the Affected Share, a price determined in the manner set out in the applicable Final Terms or, if not set out or if not practicable, using its good faith estimate of the price for the Affected Share as of the Valuation Time on the Valuation Cut-Off Date, and otherwise in accordance with the above provisions.

**"Valuation Time"** means the Valuation Time specified in the applicable Final Terms or, if no Valuation Time is specified, the Scheduled Closing Time on the relevant Exchange on the relevant Valuation Date, Observation Date or Averaging Date, as the case may be, in relation to each Share to be valued. If the relevant Exchange closes prior to its Scheduled Closing Time and the specified Valuation Time is after the actual closing time for its regular trading session, then the Valuation Time shall be such actual closing time.

### 3. **Market Disruption**

**"Market Disruption Event"** means, in relation to a Share, the occurrence or existence of (i) a Trading Disruption, (ii) an Exchange Disruption, which in either case the Calculation Agent determines is material, any time during the one hour period that ends at the Valuation Time for such Share or (iii) an Early Closure.

**4. Correction to Share Prices**

If the price of a Share published on any Valuation Date, Observation Date, or an Averaging Date, as the case may be, by the relevant Exchange and which is utilised for any calculation or determination made for the purposes of the Notes (a "**Relevant Calculation**") is subsequently corrected and the correction (the "**Corrected Share Price**") published by the relevant Exchange no later than two Business Days prior to the date of payment of any amount to be calculated by reference to the Relevant Calculation then such Corrected Share Price shall be deemed to be the relevant price for such Share on such Averaging Date, Observation Date or Valuation Date, as the case may be, and the Calculation Agent shall use such Corrected Share Price in determining the relevant price.

**5. Potential Adjustment Events, Merger Event, Tender Offer, De-listing, Nationalisation and Insolvency**

**(a) "Potential Adjustment Event" means any of the following:**

- (i) a subdivision, consolidation or reclassification of relevant Shares (unless resulting in a Merger Event or, if Tender Offer is specified as applying in the applicable Final Terms, a Tender Offer) or a free distribution or dividend of any such Shares to existing holders by way of bonus, capitalisation or similar issue;
- (ii) a distribution, issue or dividend to existing holders of the relevant Shares of (A) such Shares or (B) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the Share Company equally or proportionately with such payments to holders of such Shares or (C) share capital or other securities of another issuer acquired or owned (directly or indirectly) by the Share Company as a result of a spin-off or other similar transaction or (D) any other type of securities, rights or warrants or other assets, in any case for payment (in cash or otherwise) at less than the prevailing market price as determined by the Calculation Agent;
- (iii) an extraordinary dividend as determined by the Calculation Agent;
- (iv) a call by a Share Company in respect of relevant Shares that are not fully paid;
- (v) a repurchase by the Share Company or any of its subsidiaries, as the case may be, of relevant Shares whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise; or
- (vi) in respect of a Share Company an event that results in any shareholder rights being distributed or becoming separated from shares of common stock or other shares of the capital stock of such Share Company pursuant to a shareholder rights plan or arrangement directed against hostile takeovers that provides upon the occurrence of certain events for a distribution of preferred stock, warrants, debt instruments or stock rights at a price below their market value as determined by the Calculation Agent, provided that any adjustment effected as a result of such an event shall be readjusted upon any redemption of such rights; or
- (vii) any other event having, in the opinion of the Calculation Agent, a diluting or concentrative effect on the theoretical value of the relevant Shares.

Following the declaration by the Share Company of the terms of any Potential Adjustment Event, the Calculation Agent will, in its sole and absolute discretion, determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the Shares and, if so, will make the corresponding adjustment, if any, to any one or more of the terms of the Terms and Conditions and/or the applicable Final Terms as the Calculation Agent in its sole and absolute discretion determines appropriate to account for that diluting or concentrative effect (provided that no adjustments will be made to account solely for changes in volatility, expected dividends stock loan rate or liquidity relative to the relevant Share) and determine the effective date of that adjustment. The Calculation Agent may, but need not, determine the appropriate adjustment by

reference to the adjustment in respect of such Potential Adjustment Event made by an options exchange to options on the Shares traded on that options exchange.

If "Local Tax Adjustment" is specified in the applicable Final Terms as being applicable, then, in its determinations of the existence and extent of any dilutive or concentrative effect on the theoretical value of the Shares of any Potential Adjustment Event, and any related adjustments to the terms of the Securities, the Calculation Agent shall take into account any amounts of Local Taxes that would, in the determination of the Calculation Agent, be withheld from or paid or otherwise incurred by an Offshore Investor in connection with such Potential Adjustment Event.

**"Local Taxes"** shall mean taxes, duties, and similar charges imposed by the taxing authority of the Local Jurisdiction (specified in the applicable Final Terms).

**"Offshore Investor"** shall mean a holder of Shares who is an institutional investor not resident in the Local Jurisdiction for the purposes of the tax laws and regulations of the Local Jurisdiction and, for the avoidance of doubt, whose jurisdiction of residence (a) shall be determined by the Calculation Agent and (b) may be the jurisdiction of residence of the Issuer or any of its affiliates or agents.

Upon the making of any such adjustment, the Calculation Agent shall give notice as soon as practicable to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, stating the adjustment to the terms of the Terms and Conditions and/or the applicable Final Terms and giving brief details of the Potential Adjustment Event provided that any failure to give, or non-receipt of, such notice will not affect the validity of any such adjustment.

- (b) **"De-listing"** means, in respect of any relevant Shares, the Exchange announces that pursuant to the rules of such Exchange, such Shares cease (or will cease) to be listed, traded or publicly quoted on the Exchange for any reason (other than a Merger Event or, if Tender Offer is specified as applying in the applicable Final Terms, a Tender Offer) and are not immediately re-listed, re-traded or re-quoted on an exchange or quotation system located in the same country as the Exchange (or, where the Exchange is within the European Union, in a member state of the European Union).

**"Insolvency"** means that by reason of the voluntary or involuntary liquidation, bankruptcy, insolvency, dissolution or winding-up of or any analogous proceeding affecting the Share Company (A) all the Shares of that Share Company are required to be transferred to a trustee, liquidator or other similar official or (B) holders of the Shares of that Share Company become legally prohibited from transferring them.

**"Merger Date"** means the closing date of a Merger Event or, where a closing date cannot be determined under the local law applicable to such Merger Event, such other date as determined by the Calculation Agent.

**"Merger Event"** means, in respect of any relevant Shares, any (A) reclassification or change of such Shares that results in a transfer of or an irrevocable commitment to transfer all of such Shares outstanding to another entity or person, (B) consolidation, amalgamation, merger or binding share exchange of a Share Company with or into another entity or person (other than a consolidation, amalgamation, merger or binding share exchange in which such Share Company is the continuing entity and which does not result in a reclassification or change of all of such Shares outstanding), (C) takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person to purchase or otherwise obtain 100 per cent. of the outstanding Shares of the Share Company that results in a transfer of or an irrevocable commitment to transfer all such Shares (other than such Shares owned or controlled by such other entity or person), or (D) consolidation, amalgamation, merger or binding share exchange of the Share Company or its subsidiaries with or into another entity in which the Share Company is the continuing entity and which does not result in a reclassification or change of all such Shares outstanding but results in the outstanding Shares (other than Shares owned or controlled by such other entity) immediately prior to such event collectively representing less than 50 per cent. of the outstanding Shares immediately following such event, in each case if the Merger Date is on or before (I) in the case of Cash Settled Securities, the last occurring Valuation Date or Observation Date, as the case may be, or where Averaging is specified in the applicable Final Terms, the final Averaging Date in respect of the relevant Security or (II) in

the case of Physical Delivery Notes, the Maturity Date and in the case of Physical Delivery W&C Securities the relevant Settlement Date.

**"Nationalisation"** means that all the Shares or all or substantially all the assets of the Share Company are nationalised, expropriated or are otherwise required to be transferred to any governmental agency, authority, entity or instrumentality thereof.

**"Tender Offer"** means a takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person that results in such entity or person purchasing, or otherwise obtaining or having the right to obtain, by conversion or other means, greater than 10 per cent. and less than 100 per cent. of the outstanding voting shares of the Share Company as determined by the Calculation Agent, based upon the making of filings with governmental or self-regulatory agencies or such other information as the Calculation Agent deems relevant.

**"Tender Offer Date"** means, in respect of a Tender Offer, the date on which voting shares in the amount of the applicable percentage threshold are actually purchased or otherwise obtained (as determined by the Calculation Agent).

If (x) a Merger Event, De-listing, Nationalisation or Insolvency occurs in relation to a Share and/or (y) if Tender Offer is specified as applicable in the applicable Final Terms, a Tender Offer occurs, the Issuer in its sole and absolute discretion may take the action described in (i), (ii), (iii), (iv) or (v) below:

- (i) require the Calculation Agent to determine in its sole and absolute discretion the appropriate adjustment, if any, to be made to any terms of the Terms and Conditions and/or the applicable Final Terms to account for the De-listing, Merger Event, Tender Offer, Nationalisation or Insolvency, as the case may be, and determine the effective date of that adjustment. The Calculation Agent may (but need not) determine the appropriate adjustment by reference to the adjustment in respect of the Merger Event, Tender Offer, De-listing, Nationalisation or Insolvency made by any options exchange to options on the Shares traded on that options exchange and the relevant adjustments may in the case of adjustments following a Merger Event or Tender Offer include, without limitation, adjustments to account for changes in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares; or
- (ii) where the Share Linked Securities relate to a Basket of Shares on giving notice to the Holders in accordance with Note Condition 13, or W&C Securities Condition 10, as applicable, redeem or cancel, as the case may be, each Security in part. If a Security is so redeemed or cancelled in part the portion (the "**Partial Amount**") of each such Security representing the affected Share(s) shall be redeemed or cancelled, as the case may be, and the Issuer will (x) pay to each Holder in respect of each Security or Unit, as the case may be, held by him an amount equal to the fair market value of the Partial Amount, taking into account the Merger Event, Tender Offer, De-listing, Nationalisation or Insolvency, as the case may be, less the cost to the Issuer and/or its affiliates of unwinding any underlying related hedging arrangements, all as determined by the Calculation Agent in its sole and absolute discretion; and (y) require the Calculation Agent to determine in its sole and absolute discretion the appropriate adjustment, if any, to be made to any of the terms of the Terms and Conditions and/or the applicable Final Terms to account for such redemption or cancellation in part. For the avoidance of doubt the remaining part of each such Security after redemption or cancellation and adjustment shall remain outstanding with full force and effect. Payments will be made in such manner as shall be notified to the Holders in accordance with Note Condition 13 or W&C Security Condition 10, as applicable; or
- (iii) (A) in the case of Notes, give notice to the Noteholders in accordance with Note Condition 13 and redeem all, but not some only, of the Notes, each nominal amount of Notes equal to the Calculation Amount being redeemed at the Early Redemption Amount; or



- (B) in the case of W&C Securities, cancel the W&C Securities by giving notice to Holders in accordance with W&C Securities Condition 10. If the W&C Securities are so cancelled the Issuer will pay an amount to each Holder in respect of each W&C Security or Unit, as the case may be, held by him which amount shall be the fair market value of a W&C Security or a Unit, as the case may be, taking into account the Merger Event, Tender Offer, De-listing, Nationalisation or Insolvency, as the case may be, less the cost to the Issuer and/or any of its Affiliates or agents of unwinding any underlying related hedging arrangements (including any cost of funding in respect of such hedging arrangements) plus, in the case of Warrants, if already paid, the Exercise Price, all as determined by the Calculation Agent in its sole and absolute discretion. Payments will be made in such manner as shall be notified to the Holders in accordance with W&C Securities Condition 10; or
- (iv) following such adjustment to the settlement terms of options on the Shares traded on such exchange(s) or quotation system(s) as the Issuer in its sole discretion shall select (the "**Options Exchange**"), require the Calculation Agent to make a corresponding adjustment to any one or more of the terms of the Terms and Conditions and/or the applicable Final Terms which adjustment will be effective as of the date determined by the Calculation Agent to be the effective date of the corresponding adjustment made by the Options Exchange. If options on the Shares are not traded on the Options Exchange, the Calculation Agent will make such adjustment, if any, to any one or more of the terms of the Terms and Conditions and/or the applicable Final Terms as the Calculation Agent in its sole and absolute discretion determines appropriate, with reference to the rules and precedents (if any) set by the Options Exchange to account for the Merger Event, Tender Offer, De-listing, Nationalisation or Insolvency, as the case may be, that in the determination of the Calculation Agent would have given rise to an adjustment by the Options Exchange if such options were so traded; or
- (v) if the applicable Final Terms provide that "Share Substitution" is applicable, then on or after the relevant Merger Date, Tender Offer Date, or the date of the Nationalisation, Insolvency or De-listing (as the case may be), the Calculation Agent may adjust the basket of Shares to include a share (the "**Substitute Shares**") selected by it in accordance with the criteria for share selection ("**Share Substitution Criteria**") set out in the applicable Final Terms in place of the Share(s) (the "**Affected Share(s)**") which are affected by such Merger Event, Tender Offer, Nationalisation, Insolvency or De-listing and the Substitute Shares will be deemed to be "Shares" and the relevant issuer of such shares, a "Share Company" for the purposes of the Securities, and the Calculation Agent will make such adjustment, if any, to any of the terms of the Terms and Conditions and/or the applicable Final Terms as the Calculation Agent in its sole and absolute discretion determines appropriate.

Upon the occurrence of a Merger Event, De-listing, Nationalisation, Insolvency or, if applicable, Tender Offer, the Issuer shall give notice as soon as practicable to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, stating the occurrence of the Merger Event, Tender Offer, Nationalisation or Insolvency, as the case may be, giving details thereof and the action proposed to be taken in relation thereto provided that any failure to give, or non-receipt of, such notice will not affect the validity of any such Merger Event, Tender Offer, De-listing, Nationalisation or Insolvency, as the case may be.

## 6. Non-euro Quoted Shares

In respect of Share Linked Securities relating to Shares originally quoted, listed and/or dealt as of the Trade Date in a currency of a member state of the European Union that has not adopted the single currency in accordance with the Treaty, if such Shares are at any time after the Trade Date quoted, listed and/or dealt exclusively in euro on the relevant Exchange or, where no Exchange is specified in the applicable Final Terms, the principal market on which those Shares are traded, then the Calculation Agent will adjust any of the terms of the Terms and Conditions and/or the applicable Final Terms as the Calculation Agent determines in its sole and absolute discretion to be appropriate to preserve the economic terms of the Securities. The Calculation Agent will make any conversion

necessary for purposes of any such adjustment as of the Valuation Time at an appropriate mid-market spot rate of exchange determined by the Calculation Agent prevailing as of the Valuation Time. No adjustments under this provision will affect the currency denomination of any payment obligation arising out of the Securities.

## **7. Additional Disruption Events**

- (a) **"Additional Disruption Event"** means any of Change of Law, Hedging Disruption, Increased Cost of Hedging, Increased Cost of Stock Borrow, Loss of Stock Borrow and/or Insolvency Filing, in each case if specified in the applicable Final Terms.

**"Change in Law"** means that, on or after the Trade Date (as specified in the applicable Final Terms) (i) due to the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law), or (ii) due to the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), the Calculation Agent determines in its sole and absolute discretion that (A) it has become illegal to hold, acquire or dispose of any relevant Share or (B) it will incur a materially increased cost in performing its obligations in relation to the Share Linked Securities (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on the tax position of the Issuer and/or any of its affiliates).

**"Hedging Disruption"** means that the Issuer and/or any of its Affiliates or agents is unable, after using commercially reasonable efforts, to (i) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity or other price risk of the Issuer issuing and performing its obligations with respect to the Share Linked Securities, or (ii) realise, recover or remit the proceeds of any such transaction(s) or asset(s).

**"Hedging Shares"** means the number of Shares that the Calculation Agent deems necessary to hedge the equity or other price risk of entering into and performing its obligations with respect to the Share Linked Securities.

**"Increased Cost of Hedging"** means that the Issuer and/or any of its Affiliates or agents would incur a materially increased (as compared with circumstances existing on the Trade Date) amount of tax, duty, expense or fee (other than brokerage commissions) to (i) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity or other price risk of the Issuer issuing and performing its obligations with respect to the Share Linked Securities, or (ii) realise, recover or remit the proceeds of any such transaction(s) or asset(s), provided that any such materially increased amount that is incurred solely due to the deterioration of the creditworthiness of the Issuer and/or any of its Affiliates or agents shall not be deemed an Increased Cost of Hedging.

**"Increased Cost of Stock Borrow"** means that the Issuer and/or any of its affiliates would incur a rate to borrow Shares that is greater than the Initial Stock Loan Rate.

**"Initial Stock Loan Rate"** means, in respect of a Share, the Initial Stock Loan Rate specified in relation to such Share in the applicable Final Terms.

**"Insolvency Filing"** means that a Share Company institutes or has instituted against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, or it consents to a proceeding seeking a judgment 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 by it or such regulator, supervisor or similar official or it consents to such a petition, provided that proceedings instituted or petitions presented by creditors and not consented to by the Share Company shall not be deemed an Insolvency Filing.

**"Loss of Stock Borrow"** means that the Issuer and/or any affiliate is unable, after using commercially reasonable efforts, to borrow (or maintain a borrowing of) any Share in an amount equal to the Hedging Shares at a rate equal to or less than the Maximum Stock Loan Rate.

**"Maximum Stock Loan Rate"** means in respect of a Share, the Maximum Stock Loan Rate specified in the applicable Final Terms.

- (b) If an Additional Disruption Event occurs, the Issuer in its sole and absolute discretion may take the action described in (i) or (ii) below:
- (i) require the Calculation Agent to determine in its sole and absolute discretion the appropriate adjustment, if any, to be made to any of the other terms of the Terms and Conditions and/or the applicable Final Terms to account for the Additional Disruption Event and determine the effective date of that adjustment; or
  - (ii)
    - (A) in the case of Notes, give notice to Holders in accordance with Note Condition 13 and redeem all, but not some only, of the Notes, each nominal amount of Notes equal to the Calculation Amount being redeemed at the Early Redemption Amount; or
    - (B) in the case of W&C Securities, give notice to the Holders in accordance with W&C Securities Condition 10 and cancel the W&C Securities. If the W&C Securities are so cancelled the Issuer will pay an amount to each Holder in respect of each W&C Security or Unit, as the case may be, held by him which amount shall be the fair market value of a W&C Security or a Unit, as the case may be, taking into account the Additional Disruption Event less the cost to the Issuer and/or any of its Affiliates or agents of unwinding any underlying related hedging arrangements (including any cost of funding in respect of such hedging arrangements) plus, in the case of Warrants, if already paid, the Exercise Price, all as determined by the Calculation Agent in its sole and absolute discretion. Payments will be made in such manner as shall be notified to the Holders in accordance with W&C Securities Condition 10.
- (c) Upon the occurrence of an Additional Disruption Event, the Issuer shall give notice as soon as practicable to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, stating the occurrence of the Additional Disruption Event giving details thereof and the action proposed to be taken in relation thereto Provided That any failure to give, or non-receipt of, such notice will not affect the validity of the Additional Disruption Event.

## ANNEX 3

### ADDITIONAL TERMS AND CONDITIONS FOR DEBT LINKED SECURITIES

#### 1. Interpretation

If specified as applicable in the applicable Final Terms, the terms and conditions applicable to Debt Linked Notes shall comprise the terms and conditions of the Notes (the "**Note Conditions**") and the Additional Terms and Conditions for Debt Linked Securities set out below (the "**Debt Linked Conditions**"), in each case subject to completion and/or amendment in the applicable Final Terms. The terms and conditions applicable to Debt Linked W&C Securities shall comprise the terms and conditions of the W&C Securities (the "**W&C Securities Conditions**") and the Debt Linked Conditions, in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the Note Conditions, in the case of Notes, or the W&C Securities Conditions, in the case of W&C Securities, and the Debt Linked Conditions, the Debt Linked Conditions shall prevail. In the event of any inconsistency between (i) the Note Conditions or the W&C Securities Conditions and/or the Debt Linked Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail. References in the Debt Linked Conditions to "Security" and "Securities" shall be deemed to be references to "Note" and "Notes" or "W&C Security" and "W&C Securities" as the context admits.

#### 2. Definitions

**"Averaging Date"** means each date specified as an Averaging Date in the applicable Final Terms, or if any such day is not a Scheduled Trading Day the immediately following Scheduled Trading Day.

**"Debt Instrument Price"** means, in relation to each Security or Unit, as the case may be, the Debt Instrument Price specified in the applicable Final Terms, or if not so specified in the applicable Final Terms::

- (a) in the case of Debt Linked Securities relating to a Basket of Debt Instruments, an amount equal to the sum of the values calculated for each Debt Instrument at the bid price for such Debt Instrument as determined by or on behalf of the Calculation Agent by reference to the bid price for such Debt Instrument appearing on the Relevant Screen Page at the Valuation Time on (A) if Averaging is not specified in the applicable Final Terms, the Valuation Date or (B) if Averaging is specified in the applicable Final Terms, an Averaging Date, or if such price is not available, the arithmetic mean of the bid prices for such Debt Instrument at the Valuation Time on the Valuation Date or such Averaging Date, as the case may be, as received by it from two or more market-makers (as selected by the Calculation Agent) in such Debt Instrument, such bid prices to be expressed as a percentage of the nominal amount of such Debt Instrument, multiplied by the relevant Weighting; and
- (b) in the case of Debt Linked Securities relating to a single Debt Instrument, an amount equal to the bid price for the Debt Instrument as determined by or on behalf of the Calculation Agent by reference to the bid price for such Debt Instrument appearing on the Relevant Screen Page at the Valuation Time on (A) if Averaging is not specified in the applicable Final Terms, the Valuation Date or (B) if Averaging is specified in the applicable Final Terms, an Averaging Date, or if such price is not available, the arithmetic mean of the bid prices for such Debt Instrument at the Valuation Time on the Valuation Date or such Averaging Date, as the case may be, as received by it from two or more market-makers (as selected by the Calculation Agent) in such Debt Instrument, such bid prices to be expressed as a percentage of the nominal amount of the Debt Instrument.

**"Exchange"** means, in relation to Debt Linked Securities in relation to a Debt Instrument, each exchange or quotation system specified as such for such Debt Instrument in the applicable Final Terms, any successor to such exchange or quotation system or any substitute exchange or quotation system to which trading in the Debt Instrument has temporarily relocated (provided that the Calculation Agent has determined that there is comparable liquidity relative to such Debt Instrument on such temporary substitute exchange or quotation system as on the original Exchange).

**"Scheduled Trading Day"** has the meaning given to it in the applicable Final Terms.

**"Valuation Date"** means each Valuation Date specified in the applicable Final Terms or if that is not a Scheduled Trading Day, the immediately succeeding Scheduled Trading Day.

**"Valuation Time"** means the Valuation Time specified in the applicable Final Terms.

**3. Market Disruption**

**"Market Disruption Event"** shall mean the suspension of or limitation imposed on trading either on any exchange or quotation system on which the Debt Instruments or any of them (in the case of a Basket of Debt Instruments) are traded or on any exchange on which options contracts or futures contracts with respect to the Debt Instruments or any of them (in the case of a Basket of Debt Instruments) are traded if, in the determination of the Calculation Agent, such suspension or limitation is material.

**4. Correction of Debt Instrument Price**

If the price of a Debt Instrument published or provided on any Valuation Date or an Averaging Date which is utilised for any calculation or determination made for the purposes of the Notes (a **"Relevant Calculation"**) is subsequently corrected and the correction (the **"Corrected Debt Instrument Price"**) published or provided no later than two Business Days prior to the date of payment of any amount to be calculated by reference to the Relevant Calculation then such Corrected Debt Instrument Price shall be deemed to be the relevant price for such Debt Instrument on such Averaging Date or Valuation Date, as the case may be, and the Calculation Agent shall use such Corrected Debt Instrument Price in determining the relevant price.

## ANNEX 4

### ADDITIONAL TERMS AND CONDITIONS FOR GDR/ADR LINKED SECURITIES

#### 1. Interpretation

If specified as applicable in the applicable Final Terms, the terms and conditions applicable to GDR/ADR Linked Notes shall comprise the terms and conditions of the Notes (the "Note Conditions") and the Additional Terms and Conditions for GDR/ADR Linked Securities set out below (the "GDR/ADR Linked Conditions"), in each case subject to completion and/or amendment in the applicable Final Terms. The terms and conditions applicable to GDR/ADR Linked W&C Securities shall comprise the terms and conditions of the W&C Securities (the "W&C Securities Conditions") and the GDR/ADR Linked Conditions, in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the Note Conditions, in the case of Notes, or the W&C Securities Conditions, in the case of W&C Securities and the GDR/ADR Linked Conditions, the GDR/ADR Linked Conditions shall prevail. In the event of any inconsistency between (i) the Note Conditions or the W&C Securities Conditions and/or the GDR/ADR Linked Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail. References in the GDR/ADR Linked Conditions to "Security" and "Securities" shall be deemed to be references to "Note" and "Notes" or "W&C Security" and "W&C Securities" as the context admits.

#### 2. Share Event in Respect of GDR/ADR Linked Securities

Upon the occurrence of a Share Event, the Issuer in its sole and absolute discretion may take the action described in (i), (ii), (iii), (iv) or (v) set out in Share Linked Condition 5(b). The Issuer shall give notice as soon as practicable to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, stating the occurrence of the Share Event, giving details thereof and the action proposed to be taken in relation thereto.

"Share Event" means each of the following events:

- (i) written instructions have been given by the issuer of the Underlying Shares to the depositary of the Underlying Shares to withdraw or surrender the Underlying Shares; and
- (ii) the termination of the deposit agreement in respect of the Underlying Shares.

If an event constitutes both a Share Event and an Additional Disruption Event, the Calculation Agent shall have absolute discretion to determine which of these events such event constitutes.

"Underlying Shares" mean the shares underlying the GDR or the ADR, as the case may be.

#### 3. Potential Adjustment Event

The following additional event shall be deemed added to Share Linked Condition 5(a):

"a distribution in respect of the Underlying Shares of property other than cash, shares or rights relating to any Underlying Shares to the holder of the Underlying Shares."

#### 4. General

The provisions of Annex 2 – *Additional Terms and Conditions for Share Linked Securities* – shall apply to GDR/ADR Linked Securities as if references therein to the "Shares" were to the GDRs or ADRs as applicable and/or the Underlying Shares, as applicable, references to the "Share Company" were to the issuer of the Underlying Shares and references to the "Exchange" were to the exchange or quotation system on which the GDRs or ADRs, as the case may be, are listed and the exchange or quotation system on which the Underlying Shares are listed, and with such additional or alternative modifications as the Calculation Agent may consider necessary or otherwise desirable.

## ANNEX 5

### ADDITIONAL TERMS AND CONDITIONS FOR FX LINKED SECURITIES

#### 1. Interpretation

If specified as applicable in the applicable Final Terms, the terms and conditions applicable to FX Linked Notes shall comprise the terms and conditions of the Notes (the "**Note Conditions**") and the Additional Terms and Conditions for FX Linked Securities set out below (the "**FX Linked Conditions**"), in each case subject to completion and/or amendment in the applicable Final Terms. The terms and conditions applicable to FX Linked W&C Securities shall comprise the terms and conditions of the W&C Securities (the "**W&C Securities Conditions**") and the FX Linked Conditions, in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the Note Conditions, in the case of Notes, or the W&C Securities Conditions, in the case of W&C Securities and the FX Linked Conditions, the FX Linked Conditions shall prevail. In the event of any inconsistency between (i) the Note Conditions or the W&C Securities Conditions and/or the FX Linked Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail. References in the FX Linked Conditions to "Security" and "Securities" shall be deemed to be references to "Note" and "Notes" or "W&C Security" and "W&C Securities" as the context admits.

#### 2. Definitions

**"Averaging Date"** means each date specified as an Averaging Date in the applicable Final Terms.

**"Currency Price"** means, in relation to each Security or Unit, as the case may be, the Currency Price specified in the applicable Final Terms, or if not so specified in the applicable Final Terms:

- (a) in the case of FX Linked Securities relating to a Basket of Subject Currencies, an amount equal to the sum of the values calculated for each Subject Currency as the spot rate of exchange appearing on the FX Price Source at the Valuation Time on (A) if Averaging is not specified in the applicable Final Terms, the Valuation Date or (B) if Averaging is specified in the applicable Final Terms, an Averaging Date, for the exchange of such Subject Currency into the Base Currency (expressed as the number of units (or part units) of such Base Currency for which one unit of the Subject Currency can be exchanged), multiplied by the relevant Weighting; and
- (b) in the case of FX Linked Securities relating to a single Subject Currency, an amount equal to the spot rate of exchange appearing on the FX Price Source at the Valuation Time on (A) if Averaging is not specified in the applicable Final Terms, the Valuation Date or (B) if Averaging is specified in the applicable Final Terms, an Averaging Date, for the exchange of such Subject Currency into the Base Currency (expressed as the number of units (or part units) of the Base Currency for which one unit of the Subject Currency can be exchanged).

**"FX Business Day"** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits), or but for the occurrence of a FX Market Disruption Event would have settled payments and been open for general business in each of the Specified Financial Centres specified in the applicable Final Terms.

**"FX Disrupted Day"** means any FX Business Day on which a FX Market Disruption Event occurs.

**"FX Market Disruption Event"** means the occurrence or existence, as determined by the Calculation Agent in its sole and absolute discretion, of any FX Price Source Disruption and/or any FX Trading Suspension or Limitation and/or, if specified as applicable in the Final Terms, any Inconvertibility Event and/or any other event specified as applicable in the applicable Final Terms.

**"FX Price Source(s)"** means, in respect of a Subject Currency, the price source(s) specified in the applicable Final Terms for such Subject Currency or if the relevant rate is not published or announced by such FX Price Source at the relevant time, the successor or alternative price source or

page/publication for the relevant rate as determined by the Calculation Agent in its sole and absolute discretion.

**"FX Price Source Disruption"** means it becomes impossible or otherwise impracticable to obtain and/or execute the relevant rate(s) required to calculate the Currency Price on the Averaging Date or Valuation Date or, if different, the day on which rates for that Averaging Date or Valuation Date, as the case may be, would in the ordinary course be published or announced by the relevant FX Price Source.

**"FX Trading Suspension or Limitation"** means the suspension of and/or limitation of trading in the rate(s) required to calculate the relevant Currency Price in the Interbank Market provided that such suspension or limitation of trading is material in the opinion of the Calculation Agent.

**"Inconvertibility Event"** means the occurrence, as determined by the Calculation Agent in its sole and absolute discretion, of any action, event or circumstance whatsoever which, from a legal or practical perspective:

- (a) has the direct or indirect effect of hindering, limiting or restricting (i) the convertibility of the relevant Subject Currency into the Base Currency, or (ii) the transfer of the Subject Currency or the Base Currency to countries other than the countries for which the Subject Currency or the Base Currency, as the case may be, is the lawful currency (including without limitation, by way of any delays, increased costs or discriminatory rates of exchange or any current or future restrictions on the repatriation of the Base Currency into the Subject Currency); and
- (b) results in the unavailability of any relevant Base Currency or Subject Currency in the interbank foreign exchange market in any Specified Financial Centre(s) in accordance with normal commercial practice.

**"Interbank Market"** means the over-the-counter foreign exchange spot market open continuously from and including 5.00 a.m. Sydney time on a Monday in any week to and including 5.00 p.m. New York time on the Friday of such week.

**"Specified Financial Centre(s)"** means the financial centre(s) specified in the applicable Final Terms.

**"Scheduled Valuation Date"** means any original date, that but for the occurrence of an event causing an FX Disrupted Day, would have been a Valuation Date.

**"Valuation Cut-off Date"** means the date falling two FX Business Days immediately preceding the final Valuation Date specified in the applicable Final Terms.

**"Valuation Date"** means (x) in the case of Notes, each Valuation Date specified in the applicable Final Terms or (y) in the case of W&C Securities, the Actual Exercise Date of the relevant W&C Security, or in either case if that is not FX Business Day the first FX Business Day thereafter unless, in the opinion of the Calculation Agent such day is an FX Disrupted Day. If such day is an FX Disrupted Day, then:

- (a) where the FX Linked Securities relate to a single Subject Currency, the Valuation Date shall be the first succeeding FX Business Day that is not an FX Disrupted Day, unless each of the FX Business Days up to and including the Valuation Cut-Off Date is an FX Disrupted Day. In that case, (i) the Valuation Cut-Off Date shall be deemed to be the Valuation Date (notwithstanding the fact that such day is an FX Disrupted Day) and (ii) the Calculation Agent shall determine the relevant price in the manner set out in the applicable Final Terms or, if not set out or if not practicable, determine the relevant price in accordance with its good faith estimate of the relevant price as of the Valuation Time on the Valuation Cut-Off Date; or
- (b) where the FX Linked Securities relate to a Basket of Subject Currencies, the Valuation Date for each Subject Currency not affected by the occurrence of an FX Disrupted Day shall be the Scheduled Valuation Date and the Valuation Date for each Subject Currency affected



(each an **"Affected Subject Currency"**) by the occurrence of an FX Disrupted Day shall be the first succeeding FX Business Day that is not an FX Disrupted Day relating to the Affected Subject Currency, unless each of the FX Business Days immediately following the Scheduled Valuation Date up to and including the Valuation Cut-Off Date is an FX Disrupted Day relating to the Affected Subject Currency. In that case, (i) the Valuation Cut-Off Date shall be deemed to be the Valuation Date for the Affected Subject Currency (notwithstanding the fact that such day is an FX Disrupted Day) and (ii) the Calculation Agent shall determine the relevant price using, in relation to the Affected Subject Currency, a price determined in the manner set out in the applicable Final Terms or, if not set out or if not practicable, using its good faith estimate of the price for the Affected Subject Currency as of the Valuation Time on the Valuation Cut-Off Date, and otherwise in accordance with the above provisions..

**"Valuation Time"** means the Valuation Time specified in the applicable Final Terms.

## ANNEX 6

### ADDITIONAL TERMS AND CONDITIONS FOR COMMODITY LINKED SECURITIES

#### 1. Interpretation

If specified as applicable in the applicable Final Terms, the terms and conditions applicable to Commodity Linked Notes shall comprise the terms and conditions of the Notes (the "**Note Conditions**") and the Additional Terms and Conditions for Commodity Linked Notes set out below (the "**Commodity Linked Securities Conditions**"), in each case subject to completion and/or amendment in the applicable Final Terms. The terms and conditions applicable to Commodity Linked W&C Securities shall comprise the terms and conditions of the W&C Securities (the "**W&C Securities Conditions**") and the additional terms and conditions set out below in the Commodity Linked Conditions, in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the Note Conditions, in the case of Notes, or the W&C Securities Conditions, in the case of W&C Securities, and the Commodity Linked Conditions, the Commodity Linked Conditions shall prevail. In the event of any inconsistency between (i) the Note Conditions or the W&C Securities Conditions and/or the Commodity Linked Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail. References in the Commodity Linked Conditions to "Security" and "Securities" shall be deemed to be references to "Note" and "Notes" or "W&C Security" and "W&C Securities" as the context admits.

#### 2. Definitions

**"Calculation Agent Determination"** means that the Calculation Agent will determine the Relevant Price (or method for determining the Relevant Price), taking into consideration the latest available quotation for the relevant Commodity Reference Price and any other information that in good faith it deems relevant.

**"Commodity"** and **"Commodities"** means, subject to adjustment in accordance with these Commodity Linked Conditions, in the case of an issue of Commodities Securities relating to a Basket of Commodities, each commodity and, in the case of an issue of Commodity Linked Securities relating to a single Commodity, the Commodity, in each case specified in the applicable Final Terms and related expressions shall be construed accordingly.

**"Commodity Business Day"** has the meaning given it in the applicable Final Terms.

**"Commodity Index Cut-Off Date"** means, in respect of a Pricing Date (or, if different, the day on which the price for that Pricing Date would, in the ordinary course, be published by the Price Source) the date specified in the applicable Final Terms, or if not so specified, the day falling two Business Days immediately preceding the Payment Date or Settlement Date, as applicable of the amount calculated in respect of such Pricing Date (or other date as aforesaid).

**"Commodity Index"** means, subject to adjustment in accordance with the Commodity Linked Conditions, an index comprising various commodities or commodity prices, as specified in the applicable Final Terms.

**"Commodity Reference Price"** means (i) in respect of all Commodities, the Commodity Reference Price specified in the applicable Final Terms and (ii) in respect of a Commodity Index, the Commodity Reference Price specified in the applicable Final Terms, or if not so specified, the official closing price of such Commodity Index.

**"Commodity Trading Disruption"** means the material suspension of, or the material limitation imposed on, trading in the Futures Contract or the Commodity on the Exchange or in any additional futures contract, options contract or commodity on any Exchange.

**"Delayed Publication or Announcement"** means that the Relevant Price for a Pricing Date will be determined based on the Specified Price in respect of the original day scheduled as such Pricing Date that is published or announced by the relevant Price Source retrospectively on the first succeeding Commodity Business Day on which the Market Disruption Event ceases to exist, unless that Market Disruption Event continues to exist (measured from and including the original day that would

otherwise have been the Pricing Date) or the Relevant Price continues to be unavailable for two consecutive Commodity Business Days. In that case, the next Disruption Fallback (as defined below) specified in the applicable Final Terms will apply.

**"Delivery Date"** means the date specified in the applicable Final Terms.

**"Disappearance of Commodity Reference Price"** means:

- (i) the permanent discontinuation of trading, in the relevant Futures Contract on the relevant Exchange;
- (ii) the disappearance of, or of trading in, the Commodity; or
- (iii) the disappearance or permanent discontinuance or unavailability of a Commodity Reference Price,

notwithstanding the availability of the related Price Source or the status of trading in the relevant Futures Contract or the Commodity.

**"Exchange"** means, in relation to a Commodity, the exchange or principal trading market specified as such for such Commodity in the applicable Final Terms or Commodity Reference Price.

**"Fallback Reference Price"** means that the Calculation Agent will determine the Relevant Price based on the price for that Pricing Date of the first alternate Commodity Reference Price, if any, specified in the applicable Final Terms and not subject to a Market Disruption Event.

**"Futures Contract"** means, in respect of a Commodity Reference Price, the contract for future delivery of a contract size in respect of the relevant Delivery Date relating to the Commodity or Commodity Index referred to in that Commodity Reference Price.

**"Material Change in Content"** means the occurrence since the Trade Date of a material change in the content, composition or constitution of the relevant Commodity or relevant Futures Contract.

**"Material Change in Formula"** means the occurrence since the Trade Date of a material change in the formula for or method of calculating the relevant Commodity Reference Price.

**"Nearby Month"** when preceded by a numerical adjective, means, in respect of a Delivery Date and a Pricing Date, the month of expiration of the Futures Contract identified by the numerical adjective, so that, for example, (i) **"First Nearby Month"** means the month of expiration of the first Futures Contract to expire following that Pricing Date and (ii) **"Second Nearby Month"** means the month of expiration of the second Futures Contract to expire following that Pricing Date etc.

**"Postponement"** means that the Pricing Date will be deemed, for purposes of the application of this Disruption Fallback, to be the first succeeding Commodity Business Day on which the Market Disruption Event ceases to exist, unless that Market Disruption Event continues to exist for two consecutive Commodity Business Days (measured from and including the original day that would otherwise have been the Pricing Date). In that case, the next Disruption Fallback specified in the definition of "Disruption Fallback" below will apply.

**"Price Source"** means the publication (or such other origin of reference, including an Exchange) containing (or reporting) the Specified Price (or prices from which the Specified Price is calculated) specified in the specified Commodity Reference Price or otherwise in the applicable Final Terms.

**"Price Source Disruption"** means:

- (i) the failure of the Price Source to announce or publish the Specified Price (or the information necessary for determining the Specified Price) for the relevant Commodity Reference Price; or
- (ii) the temporary or permanent discontinuance or unavailability of the Price Source.

For these purposes:

- (a) a suspension of the trading in the Futures Contract or the Commodity on any Commodity Business Day shall be deemed to be material only if:
  - (i) all trading in the Futures Contract or the Commodity is suspended for the entire Pricing Date; or
  - (ii) all trading in the Futures Contract or the Commodity is suspended subsequent to the opening of trading on the Pricing Date, trading does not recommence prior to the regularly scheduled close of trading in such Futures Contract or such Commodity on such Pricing Date and such suspension is announced less than one hour preceding its commencement; and
- (b) a limitation of trading in the Futures Contract or the Commodity on any Commodity Business Day shall be deemed to be material only if the relevant Exchange establishes limits on the range within which the price of the Futures Contract or the Commodity may fluctuate and the closing or settlement price of the Futures Contract or the Commodity on such day is at the upper or lower limit of that range.

**"Pricing Date"** has the meaning given it in the applicable Final Terms.

**"Relevant Price"** means for any Pricing Date, the price, expressed as a price per unit of the Commodity or the price of the Commodity Index, determined with respect to that day for the specified Commodity Reference Price calculated as provided in these Commodity Linked Securities Conditions and the applicable Final Terms.

**"Specified Price"** means, in respect of a Commodity Reference Price, any of the following prices (which must be a price reported in or by, or capable of being determined from information reported in or by, the relevant Price Source) as specified in the applicable Final Terms (and, if applicable, as of the time so specified): (A) the high price; (B) the low price; (C) the average of the high price and the low price; (D) the closing price; (E) the opening price; (F) the bid price; (G) the asked price; (H) the average of the bid price and the asked price; (I) the settlement price; (J) the official settlement price; (K) the official price; (L) the morning fixing; (M) the afternoon fixing; (N) the spot price; or (O) any other price specified in the applicable Final Terms.

### 3. Terms relating to Calculation of Prices

#### (a) Common Pricing

With respect to Commodity Linked Securities relating to a Basket of Commodities, if "Common Pricing" is specified in the applicable Final Terms as:

- (i) "Applicable" then, no date will be a Pricing Date unless such date is a day on which all referenced Commodity Reference Prices (for which such date would otherwise be a Pricing Date) are scheduled to be published or announced, as determined on the Trade Date of the Securities as of the Issue Date;
- (ii) "Not Applicable" then, if the Calculation Agent determines that a Market Disruption Event has occurred or exists on the Pricing Date in respect of any Relevant Commodity and/or Commodity Index (each an "**Affected Commodity**"), the Relevant Price of each Commodity and/or Commodity Index within the basket which is not affected by the occurrence of a Market Disruption Event shall be determined on its scheduled Pricing Date and the Relevant Price for each Affected Commodity shall be determined in accordance with the first applicable Disruption Fallback that provides a Relevant Price.

All determinations made by the Calculation Agent pursuant to this condition will be conclusive and binding on the Holders, the Issuer and the Guarantor, except in the case of manifest error.

(b) **Correction to Published Prices**

For purposes of determining or calculating the Relevant Price, if the price published or announced on a given day and used or to be used by the Calculation Agent to determine a Relevant Price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within 30 calendar days after the original publication or announcement (or, if earlier the day falling two Commodity Business Days preceding the date on which payment of any amount to be calculated by reference to such Relevant Price), the Calculation Agent may, in its sole discretion, use such corrected price in such calculation.

4. **Market Disruption and Disruption Fallback**

If, in the opinion of the Calculation Agent, a Market Disruption Event (as defined below) has occurred and is continuing on any Pricing Date (or, if different, the day on which the price for that Pricing Date would, in the ordinary course, be published by the Price Source), the Relevant Price for that Pricing Date will be determined by the Calculation Agent, in accordance with the first applicable Disruption Fallback (as set out below) that provides a Relevant Price:

(a) **Market Disruption Event**

**"Market Disruption Event"** means the occurrence of any of the following events:

- (i) with respect to all Commodities:
  - (A) Price Source Disruption;
  - (B) Commodity Trading Disruption;
  - (C) Disappearance of Commodity Reference Price; and
- (ii) with respect to all Commodities other than gold, silver, platinum or palladium:
  - (A) Material Change in Formula;
  - (B) Material Change in Content; and
  - (C) any additional Market Disruption Events as specified in the applicable Final Terms; and
- (iii) with respect to a Commodity Index:
  - (A) a temporary or permanent failure by the applicable exchange or other price source to announce or publish (x) the Commodity Reference Price or (y) closing price for any futures contract included in the Commodity Index;
  - (B) a material limitation, suspension or disruption of trading in one or more of the futures contracts included in the Commodity Index which results in a failure by the exchange on which each applicable futures contract is traded to report a closing price for such contract on the day on which such event occurs or any succeeding day on which it continues; or
  - (C) the closing price for any futures contract included in the Commodity Index is a "limit price", which means that the closing price for such contract for a day has increased or decreased from the previous day's closing price by the maximum amount permitted under applicable exchange rules.

(iv) **Disruption Fallback**

**"Disruption Fallback"** means a source or method that may give rise to an alternative basis for determining the Relevant Price in respect of a specified Commodity Reference Price when a Market Disruption Event occurs or exists on a day that is a Pricing Date in respect of the relevant Security. A Disruption Fallback is applicable if it is specified in the applicable Final Terms or, if no Disruption Fallback is specified in the applicable Final Terms, shall mean:

- (A) with respect to a relevant Commodity, (in the following order):
  - I. Fallback Reference Price (if applicable);
  - II. Delayed Publication or Announcement and Postponement (each to operate concurrently with the other and each subject to a period of two consecutive Commodity Business Days (measured from and including the original day that would otherwise have been the Pricing Date)) provided, however, that the price determined by Postponement shall be the Relevant Price only if Delayed Publication or Announcement does not yield a Relevant Price within those two consecutive Commodity Business Days); and
  - III. Calculation Agent Determination;
- (B) with respect to a Commodity Index the Calculation Agent shall determine the Relevant Price:
  - (a) using:
    - (i) with respect to each futures contract included in the Commodity Index which is not affected by the Market Disruption Event, the closing prices of each such contract on the applicable determination date; and
    - (ii) with respect to each futures contract included in the Commodity Index which is affected by the Market Disruption Event, the closing prices of each such contract on the first day following the applicable determination date on which no Market Disruption Event is occurring with respect to such contract; or
  - (b) as specified in the applicable Final Terms.

Subject as provided below, the Calculation Agent shall determine the Relevant Price by reference to the closing prices determined in (a)(i) and (a)(ii) above or as provided in (b) above using the then current method for calculating the Commodity Reference Price.

Where a Market Disruption Event with respect to one or more futures contracts included in the Commodity Index has occurred on an applicable determination date and continues to exist as of the relevant Commodity Index Cut-Off Date for such applicable determination date, the Calculation Agent shall determine the Relevant Price on such Commodity Index Cut-Off Date. In calculating the Relevant Price as set out herein, the Calculation Agent shall use the formula for calculating the Commodity Reference Price last in effect prior to the Market Disruption Event.

## 5. Adjustments to a Commodity Index

### (a) Successor Index Sponsor Calculates and Reports a Commodity Index

If a relevant Commodity Index is (i) not calculated and announced by the Index Sponsor but is calculated and announced by a successor sponsor (the "**Successor Index Sponsor**") acceptable to the Issuer, or (ii) replaced by a successor index using, in the determination of the Calculation Agent, the same or a substantially similar formula for and method of calculation as used in the calculation of that Commodity Index, then in each case that index (the "**Successor Index**") will be deemed to be the Commodity Index.

(b) **Modification and Cessation of Calculation of a Commodity Index**

If on or prior to a Pricing Date (i) the relevant Index Sponsor makes a material change in the formula for or the method of calculating a relevant Commodity Index or in any other way materially modifies that Commodity Index (other than a modification prescribed in that formula or method to maintain that Commodity Index in the event of changes in constituent commodities and weightings and other routine events), or (ii) the Index Sponsor permanently cancels a relevant Commodity Index or (iii) the Index Sponsor fails to calculate and announce a relevant Commodity Index and there is no Successor Index Sponsor or Successor Index then the Calculation Agent may at its option (in the case of (i)) and shall (in the case of (ii) and (iii)) (such events (i) (ii) and (iii) to be collectively referred to as "Index Adjustment Events") calculate the Relevant Price using in lieu of the published level for that Commodity Index, the level for that Commodity Index as at the relevant determination date as determined by the Calculation Agent in accordance with the formula for and method of calculating that Commodity Index last in effect prior to the relevant Index Adjustment Event, but using only those futures contracts that comprised that Commodity Index immediately prior to the relevant Index Adjustment Event (other than those futures contracts that have ceased to be listed on any relevant exchange).

(c) **Corrections to a Commodity Index**

If the level of a relevant Commodity Index published on any Pricing Date (or, if different, the day on which the price for that Pricing Date would, in the ordinary course, be published by the Price Source) by the relevant Index Sponsor or (if applicable) the relevant Successor Index Sponsor and which is utilised for any calculation or determination made for the purposes of the Commodity Linked Securities (a "**Relevant Calculation**") is subsequently corrected and the correction (the "**Corrected Commodity Index Level**") published by the relevant Index Sponsor or (if applicable) the relevant Successor Index Sponsor no later than two Business Days prior to the date of payment of any amount to be calculated by reference to the Relevant Calculation then such Corrected Commodity Index Level shall be deemed to be the relevant level for such Commodity Index on such Pricing Date (or, if different, the day on which the price for that Pricing Date would, in the ordinary course, be published by the Price Source) and the Calculation Agent shall use such Corrected Commodity Index Level in determining the relevant level or price.

## ANNEX 7

### ADDITIONAL TERMS AND CONDITIONS FOR FUND LINKED SECURITIES

The terms and conditions applicable to Fund Linked Notes shall comprise the terms and conditions of the Notes (the "**Note Conditions**") and the Additional Terms and Conditions for Fund Linked Securities set out below (the "**Fund Linked Conditions**"), in each case subject to completion and/or amendment in the applicable Final Terms. The terms and conditions applicable to Fund Linked W&C Securities shall comprise the terms and conditions of the W&C Securities (the "**W&C Securities Conditions**") and the Fund Linked Conditions, in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the Note Conditions, in the case of Notes, or the W&C Securities Conditions, in the case of W&C Securities, and the Fund Linked Conditions, the Fund Linked Conditions shall prevail. In the event of any inconsistency between (i) the Note Conditions or the W&C Securities Conditions and/or the Fund Linked Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail. References in the Fund Linked Conditions to "Security" and "Securities" shall be deemed to be references to "Note" and "Notes" or "W&C Security" and "W&C Securities" as the context admits.

#### 1. General Definitions

"**Averaging Date**" means, in respect of an Actual Exercise Date, each date specified as an Averaging Date in the applicable Final Terms.

"**Valuation Date**" means each Valuation Date specified in the applicable Final Terms.

#### 2. Provisions relating to Funds other than Exchange Traded Funds

Fund Linked Conditions 3, 4 and 5 apply in respect of Funds other than Exchange Traded Funds.

#### 3. Definitions (Funds other than Exchange Traded Funds)

"**Fund**" means, subject to adjustment in accordance with these Fund Linked Securities Conditions, each fund specified in the applicable Final Terms and related expressions shall be construed accordingly.

"**Fund Administrator**" means the fund administrator, manager, trustee or similar person with the primary administrative responsibilities for a Fund according to the relevant Fund Documents.

"**Fund Adviser**" means any person appointed in the role of discretionary investment manager or non-discretionary investment adviser (including a non-discretionary investment adviser to a discretionary investment manager or to another non-discretionary investment adviser).

"**Fund Documents**" means the constitutive and governing documents, subscription agreements and other agreements of a Fund specifying the terms and conditions relating to the related Fund Interest, as amended from time to time.

"**Fund Interest**" means, subject to adjustment in accordance with these Fund Linked Conditions, each fund interest specified in the applicable Final Terms and related expressions shall be construed accordingly.

"**Fund Redemption Valuation Date**" means, in respect of a Fund Interest, the date as of which a Fund (or its Fund Service Provider that generally determines such value) would determine the net asset value of such Fund Interest for purposes of calculating the redemption proceeds to be paid to a Hypothetical Investor that has submitted a valid and timely notice for redemption of Fund Interests based on the value determined as of such date.

"**Fund Service Provider**" means any person who is appointed to provide services, directly or indirectly, to a Fund, whether or not specified in the relevant Fund Documents, including without limitation any Fund Administrator, Fund Adviser, operator, management company, depository, custodian, sub-custodian, prime broker, administrator, trustee, registrar and transfer agent or domiciliary agent.

"**Fund Valuation Date**" means a date as of which a Fund (or its Fund Service Provider that generally determines such value) determines the value of the related Fund Interest.



**"Hypothetical Investor"** means a hypothetical or actual investor (as determined by the Calculation Agent in the context of the relevant situation) in Fund Interests which is deemed to have the benefits and obligations, as provided in the relevant Fund Documents, of an investor holding Fund Interests at the relevant time. The Hypothetical Investor may be deemed by the Calculation Agent to be resident or organised in any jurisdiction, and to be, without limitation, the Issuer, the Calculation Agent or any of their affiliates (as determined by the Calculation Agent in the context of the relevant situation).

**"Removal Date"** means, in respect of an Affected Fund Interest, the date on which the Calculation Agent determines that a Hypothetical Investor would receive the Removal Value in respect of a redemption or realisation of such Affected Fund Interest effected as soon as reasonably practicable following the occurrence of the relevant Fund Event.

**"Removal Value"** means, in respect of an Affected Fund Interest, the amount that the Calculation Agent determines a Hypothetical Investor would receive on the redemption or realisation of such Affected Fund Interest at the relevant time, Provided That if any such redemption proceeds would comprise non-monetary assets the Removal Value shall include the amount (if any) that the Calculation Agent determines would be received by the Hypothetical Investor in respect of a realisation (in whatsoever manner the Calculation Agent determines appropriate) of such non-monetary assets as soon as reasonably practicable after their receipt.

**"Scheduled Fund Redemption Valuation Date"** means the date as of which a Fund (or its Fund Service Provider that generally determine such value) is scheduled, according to the relevant Fund Documents (without giving effect to any gating, deferral, suspension or other provisions permitting the Fund to delay or refuse redemption of Fund Interests), to determine the net asset value of the related Fund Interest for purposes of calculating the redemption proceeds to be paid to an investor that has submitted a valid and timely notice for redemption of Fund Interests based on the value determined as of such date.

**"Scheduled Fund Valuation Date"** means, in respect of a Fund Interest, a date as of which the related Fund (or its Fund Service Provider that generally determines such value) is scheduled, according to the relevant Fund Documents (without giving effect to any gating, deferral, suspension or other provisions permitting the Fund to delay or refuse redemption of Fund Interests), to determine the value of the related Fund Interest or, if the Fund only reports its aggregate net asset value, the date as of which such Fund is scheduled to determine its aggregate net asset value.

**"Valuation Time"** means the time specified in the applicable Final Terms.

#### 4. Fund Events

**"Fund Event"** means the occurrence of each of a Additional Fund Disruption Event, a Fund Disruption Event and/or a Fund Extraordinary Event as determined by the Calculation Agent.

(a) **"Additional Fund Disruption Event"** means each of Change in Law, Fund Hedging Disruption or Increased Cost of Hedging.

**"Change in Law"** means that, on or after the Trade Date (i) due to the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law), or (ii) due to the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), the Issuer or any of its affiliates or agents acting on its behalf determines in good faith that (x) it has become illegal to hold, acquire or dispose of any Fund Interests, or (y) the Issuer will incur a materially increased cost in performing its obligations under the Fund Linked Securities (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on its tax position).

**"Fund Hedging Disruption"** means that the Issuer or any of its Affiliates or agents is unable, or it is impractical for the Issuer or any of its Affiliates or agents, after using commercially reasonable efforts, to (i) acquire, establish, re-establish, substitute, maintain,

unwind or dispose of any transaction or asset it deems necessary or appropriate to hedge the price risk relating to any Fund Interest of the Issuer issuing and performing its obligations with respect to the Fund Linked Securities, or (ii) realise, recover or remit the proceeds of any such transaction or asset, including, without limitation, where such inability or impracticability has arisen by reason of (x) any restrictions or increase in charges or fees imposed by a Fund on an investor's ability to redeem the related Fund Interest, in whole or in part, or any existing or new investor's ability to make new or additional investments in such Fund Interest, or (y) any mandatory redemption, in whole or in part, of a Fund Interest imposed by the related Fund (in each case other than any restriction in existence on the Trade Date or, in respect of a Replacement Fund Interest, the relevant replacement date).

**"Increased Cost of Hedging"** means that the Issuer or any of its Affiliates or agents would incur a materially increased (as compared with circumstances existing on the Issue Date) amount of tax, duty, expense or fee (other than brokerage commissions) to (i) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the price risk relating to any Fund Interest of the Issuer issuing and performing its obligations with respect to the Fund Linked Securities, or (ii) realise, recover or remit the proceeds of any transaction(s) or asset(s), provided that any such materially increased amount that is incurred solely due to the deterioration of the creditworthiness of the Issuer shall not be deemed an Increased Cost of Hedging.

- (b) **"Fund Disruption Event"** means at any time the occurrence or continuance of any of the following events, as determined by the Calculation Agent in its sole and absolute discretion, if the Calculation Agent determines any such event is material:
  - (i) **Fund Valuation Disruption: "Fund Valuation Disruption"** means (x) the failure of a Scheduled Fund Redemption Valuation Date in respect of a Fund Interest to be a Fund Redemption Valuation Date in respect of such Fund Interest or any continued postponement of such Fund Redemption Valuation Date, or (y) the failure of a Scheduled Fund Valuation Date in respect of a Fund Interest to be a Fund Valuation Date in respect of such Fund Interest or any continued postponement of such Fund Valuation Date;
  - (ii) **Fund Settlement Disruption: "Fund Settlement Disruption"** means a failure by a Fund on any day to pay the full amount (whether expressed as a percentage or otherwise) of any fund redemption proceeds with respect to any Fund Interest scheduled to have been paid on or by such day according to the relevant Fund Documents (without giving effect to any gating, deferral, suspension or other provisions permitting the Fund to delay or refuse redemption of Fund Interests).
- (c) **"Fund Extraordinary Event"** means each of the following events:
  - (i) **Nationalisation: "Nationalisation"** means that all the Fund Interests or all or substantially all the assets of a Fund are nationalised, expropriated or are otherwise required to be transferred to any governmental agency, authority, entity or instrumentality thereof;
  - (ii) **Insolvency: "Insolvency"** means that by reason of the voluntary or involuntary liquidation, bankruptcy, insolvency, dissolution or winding-up of or any analogous proceeding affecting a Fund, (x) all the Fund Interests of that Fund are required to be transferred to a trustee, liquidator or other similar official or (y) holders of the Fund Interests of that Fund become legally prohibited from transferring or redeeming them;
  - (iii) **Fund Insolvency Event: "Fund Insolvency Event"** means a Fund or relevant Fund Service Provider (A) is dissolved or has a resolution passed for its dissolution, winding-up or official liquidation (other than pursuant to a consolidation, amalgamation or merger); (B) makes a general assignment or arrangement with or for the benefit of its creditors; (C) (x) institutes or has instituted against it, by a

regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment 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 by it or such regulator, supervisor or similar official, or (y) has instituted against it a proceeding seeking a judgment 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 such proceeding or petition is instituted or presented by a person or entity not described in clause (x) above and either (1) results in a judgment 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 (2) is not dismissed, discharged, stayed or restrained in each case within fifteen days of the institution or presentation thereof; (D) 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; (E) 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 of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within fifteen days thereafter; or (F) 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 paragraphs (E) and (F) above;

- (iv) NAV Trigger Event: "**NAV Trigger Event**" means that (x) the aggregate net asset value of a Fund has decreased by an amount equal to or greater than 30 per cent. since the Trade Date or, in respect of a Replacement Fund Interest, the relevant replacement date; or (y) a Fund has violated any leverage restriction that is applicable to, or affecting, it or its assets by operation of any law, any order or judgment of any court or other agency of government applicable to it or any of its assets, the relevant Fund Documents or any contractual restriction binding on or affecting the Fund or any of its assets;
- (v) Adviser Resignation Event: "**Adviser Resignation Event**" means the resignation, termination of appointment, or replacement of a Fund's Fund Adviser;
- (vi) Fund Modification: "**Fund Modification**" means any change or modification of the relevant Fund Documents that could reasonably be expected to affect the value of a Fund Interest or the rights or remedies of any holders thereof (in each case, as determined by the Calculation Agent) from those prevailing on the Trade Date or, in respect of a Replacement Fund Interest, the relevant replacement date; or the imposition of any fees or charges in relation to redemptions, subscriptions or transfers of Fund Interests;
- (vii) Strategy Breach: "**Strategy Breach**" means any breach or violation of any strategy or investment guidelines stated in the relevant Fund Documents that is reasonably likely to affect the value of a Fund Interest or the rights or remedies of any holders thereof (in each case, as determined by the Calculation Agent); or any change of the nature of a Fund, including but not limited to the type of investments, the duration, the credit risk and diversification of the investments to which that Fund is exposed, which, in the opinion of the Calculation Agent, results in a material deterioration of the risk profile of that Fund;
- (viii) Regulatory Action: "**Regulatory Action**" means (x) the cancellation, suspension or revocation of the registration or approval of a Fund Interest or the related Fund by any governmental, legal or regulatory entity with authority over such Fund Interest

or Fund, (y) any change in the legal, tax, accounting, or regulatory treatments of a Fund or its Fund Adviser that is reasonably likely to have an adverse impact on the value of the related Fund Interest or on any investor therein (as determined by the Calculation Agent), or (z) a Fund or any of its Fund Administrator or Fund Adviser becoming subject to investigation, proceeding or litigation by any relevant governmental, legal or regulatory authority involving the alleged violation of applicable law for any activities relating to or resulting from the operation of such Fund, Fund Administrator or Fund Adviser;

- (ix) **Reporting Disruption:** "**Reporting Disruption**" means (x) occurrence of any event affecting a Fund Interest that, in the determination of the Calculation Agent, would make it impossible or impracticable for the Calculation Agent to determine the value of such Fund Interest in respect of a Scheduled Fund Valuation Date or a Scheduled Fund Redemption Valuation Date, and such event continues for at least two consecutive Scheduled Fund Valuation Dates or Scheduled Fund Redemption Valuation Dates, as the case may be; (y) any failure of a Fund to deliver, or cause to be delivered, (A) information that such Fund has agreed to deliver, or cause to be delivered to the Calculation Agent, including, but not limited to, information to determine the occurrence of a Fund Event and the annual audited financial report and semi-annual financial report, if any, in relation to the related Fund Interests, or (B) information that has been previously delivered to the Calculation Agent, in accordance with such Fund's, or its authorised representative's, normal practice and that the Calculation Agent deems necessary to monitor such Fund's compliance with any investment guidelines, asset allocation methodologies or any other similar policies relating to the related Fund Interests;
- (x) **Fund Service Provider Cessation:** "**Fund Service Provider Cessation**" means that one or more Fund Service Provider(s) in respect of a Fund ceases to provide the service as outlined in the relevant Fund Documents prevailing on the Trade Date or, where the related Fund Interest is a Replacement Fund Interest, the relevant replacement date, and any such Fund Service Provider is not immediately replaced by another service provider acceptable to the Calculation Agent;
- (xi) **Fund Administrator Disruption:** "**Fund Administrator Disruption**" means any event or circumstances compromising the independence of a Fund Administrator performing services for a Fund from the relevant Fund Adviser; or
- (xii) **Related Agreement Termination:** "**Related Agreement Termination**" means a Fund or any of its Fund Administrator or Fund Adviser is in breach of or has terminated any existing agreement with the Calculation Agent in respect of, but not limited to, retrocession, dealing fees, liquidity and licensing.

Following the occurrence of a Fund Event, the Issuer may take the action described in (i) or (ii) below:

- (i) require the Calculation Agent to make such determinations and/or adjustments to the Terms and Conditions and/or the applicable Final Terms as it determines appropriate to account for the Fund Event, which may include, without limitation, delaying any determination until it determines that no Fund Event exists, calculating the value of a Fund Interest and/or replacing a Fund Interest (the "**Affected Fund Interest**") with a replacement fund interest (the "**Replacement Fund Interest**") with a value as determined by the Calculation Agent equal to the Removal Value for the Affected Fund Interest and in a fund which in the determination of the Calculation Agent has similar characteristics, investment objectives and policies to those applicable to the Fund in respect of the Affected Fund Interest immediately prior to the occurrence of the Fund Event; or

- (ii) (A) in the case of Notes, on giving notice to the Holders in accordance with Note Condition 13, redeem all (but not some only) of the Notes, each Note being redeemed at the Early Redemption Amount; or
- (B) in the case of W&C Securities, on giving notice to the Holders in accordance with W&C Securities Condition 10, cancel the W&C Securities. If the W&C Securities are so cancelled the Issuer will pay an amount to each Holder in respect of each W&C Security or Unit, as the case may be, held by him which amount shall be the fair market value of a W&C Security or Unit, as the case may be, taking into account the Fund Event, less the cost to the Issuer and/or any its affiliates or agents of unwinding any underlying related hedging arrangements) plus, in the case of Warrants, if already paid, the Exercise Price, all as determined by the Calculation Agent in its sole and absolute discretion.

If the Calculation Agent replaces an Affected Fund Interest with a Replacement Fund Interest, such replacement shall take effect on the first reasonably practicable date following the Removal Date for such Affected Fund Interest on which the Calculation Agent determines that a Hypothetical Investor could acquire the Replacement Fund Interest.

Upon the occurrence of a Fund Event, the Issuer shall give notice as soon as reasonably practicable to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, giving details of the action proposed to be taken in relation thereto, Provided That any failure to give, or non-receipt of, such notice will not affect the validity of such action.

## 5. Fund Potential Adjustment Events

"Fund Potential Adjustment Event" means any of the following:

- (i) a subdivision, consolidation or reclassification of relevant Fund Interests or a free distribution or dividend of any such Fund Interests to existing holders by way of bonus, capitalisation or similar issue;
- (ii) a distribution, issue or dividend to existing holders of relevant Fund Interests of (A) such Fund Interests or (B) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the related Fund equally or proportionately with such payments to holders of such Fund Interests or (C) share capital or other securities of another issuer acquired or owned (directly or indirectly) by the related Fund as a result of a spin-off or other similar transaction or (D) any other type of securities, rights or warrants or other assets, in any case for payment (in cash or in other consideration) at less than the prevailing market price as determined by the Calculation Agent;
- (iii) an extraordinary dividend as determined by the Calculation Agent;
- (iv) a repurchase by a Fund of relevant Fund Interests whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise other than where such repurchase is a redemption of Fund Interests initiated by an investor in such Fund Interests and consistent with the relevant Fund Documents; or
- (v) any other event that may have, in the opinion of the Calculation Agent, a diluting, concentrative or other on the theoretical value of relevant Fund Interests.

Following the declaration by a Fund of the terms of any Fund Potential Adjustment Event, the Calculation Agent will, in its sole and absolute discretion, determine whether such Fund Potential Adjustment Event has a diluting, concentrative or other effect on the theoretical value of the relevant Fund Interest and, if so, will make the corresponding adjustment, if any, to any one or more of any of the terms of the Terms and Conditions and/or the applicable Final Terms as the Calculation Agent in its sole and absolute discretion, determines appropriate to account for that diluting, concentrative or other effect (provided that no adjustments will be made to account solely for changes in volatility, expected dividends or liquidity relative to the relevant Fund Interest) and determine the effective date of that adjustment.

Upon the making of any such adjustment by the Calculation Agent, the Issuer shall give notice as soon as reasonably practicable to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, stating the adjustment to any of the terms of the Terms and Conditions, and/or the applicable Final Terms and giving brief details of the Fund Potential Adjustment Event, Provided That any failure to give, or non receipt of, such notice will not affect the validity of any such adjustment.

**6. Provisions relating to Exchange Traded Funds**

Fund Linked Conditions 7, 8, 9 and 10 apply to Exchange Traded Funds.

**7. Definitions (Exchange Traded Funds)**

**"Disrupted Day"** means any Scheduled Trading Day on which a relevant Exchange or any Related Exchange fails to open for trading during its regular trading session or on which a Market Disruption Event has occurred.

**"ETF"** means any fund which is an exchange traded fund as specified in the applicable Final Terms, or if not so specified, any fund which the Calculation Agent determines to be an Exchange Traded Fund.

**"Exchange"** means, in relation to a Fund Share, the exchange or principal trading market for such ETF specified in the applicable Final Terms, any successor to such exchange or quotation system or any substitute exchange or quotation system to which trading in the Fund Shares in respect of such ETF has temporarily relocated.

**"Exchange Business Day"** means any Scheduled Trading Day on which each Exchange and each Related Exchange are open for trading during their respective regular trading sessions, notwithstanding any such Exchange or Related Exchange closing prior to its Scheduled Closing Time.

**"Fund Share"** means a share of each ETF, and references to "holder of Fund Shares" and "Fund Shareholder" shall be construed accordingly.

**"Related Exchange"** means, in relation to a Fund Share, each exchange or principal trading market specified as such for such Fund Share in the applicable Final Terms, any successor to such exchange or quotation system or any substitute exchange or quotation system to which trading in the Fund Shares in respect of such Fund Share has temporarily relocated (provided the Calculation Agent has determined that there is comparable liquidity relative to such Fund Shares on such temporary substitute exchange or quotation system as on the original Related Exchange), provided however, that where "All Exchanges" is specified as the Related Exchange in the applicable Final Terms, "Related Exchange" shall mean each exchange or principal trading market where trading has a material effect (as determined by the Calculation Agent) on the overall market for such Fund Shares.

**"Scheduled Closing Time"** means, in respect of an Exchange or Related Exchange and a Scheduled Trading Day, the scheduled weekday closing time of such Exchange or Related Exchange on such Scheduled Trading Day, without regard to after hours or any other trading outside of the regular trading session hours.

**"Scheduled Trading Day"** means any day on which each Exchange and each Related Exchange are scheduled to be open for trading for their respective regular trading sessions.

**"Underlying Index"** means the underlying index specified in the applicable Final Terms.

**"Valuation Time"** means the Valuation Time specified in the applicable Final Terms or, if no Valuation Time is specified, the Scheduled Closing Time on the relevant Exchange on the relevant Valuation Date in relation to each Fund Share to be valued. If the relevant Exchange closes prior to its Scheduled Closing Time and the specified Valuation Time is after the actual closing time for its regular trading session, then the Valuation Time shall be such actual closing time.

## **8. Market Disruption**

**"Market Disruption Event"** means, in respect of a Fund Share:

- (a) the occurrence or existence at any time during the one hour period that ends at the relevant Valuation Time:
  - (x) of any suspension of or limitation imposed on trading by the relevant Exchange or Related Exchange or otherwise and whether by reason of movements in price exceeding limits permitted by the relevant Exchange or Related Exchange or otherwise:
    - (A) relating to the relevant Fund Share on such Exchange; or
    - (B) relating to securities that comprise 20 percent or more of the level of the relevant Underlying Index or any relevant successor index; or
    - (C) in futures or options contracts relating to such Fund Shares or the relevant Underlying Index on any relevant Related Exchange, or
  - (y) of any event (other than an event described in (b) below) that disrupts or impairs (as determined by the Calculation Agent) the ability of market participants in general to (i) effect transactions in, or obtain market values for, the Fund Shares on the Exchange, (ii) effect transactions in, or obtain market values for securities that comprise 20 percent or more of the level of the relevant Underlying Index, or (iii) to effect transactions in, or obtain market values for, futures or options contracts relating to such Fund Shares or the relevant Underlying Index on any relevant Related Exchange; or
- (b) the closure on any Exchange Business Day of any relevant Exchange(s) or any Related Exchange(s) prior to its Scheduled Closing Time unless such earlier closing time is announced by such Exchange(s) or such Related Exchange(s), as the case may be, at least one hour prior to (A) the actual closing time for the regular trading session on such Exchange(s) or such Related Exchange on such Exchange Business Day or, if earlier, (B) the submission deadline for orders to be entered into such Exchange or Related Exchange system for execution at the Valuation Time on such Exchange Business Day,

which in any such case the Calculation Agent determines is material.

For the purpose of determining whether a Market Disruption Event exists in respect of a Fund Share at any time, if an event giving rise to a Market Disruption Event occurs in respect of a security included in the relevant Underlying Index at that time, then the relevant percentage contribution of that security, to the level of the relevant Underlying Index shall be based on a comparison of (i) the portion of the level of the relevant Underlying Index attributable to that security, and the overall level of the relevant Underlying Index immediately before the occurrence of such Market Disruption Event.

The Issuer shall give notice as soon as practicable to the Holders in accordance with Note Condition 13 in the case of Notes, or W&C Securities Condition 10 in the case of W&C Securities of the occurrence of a Disrupted Day on any day that, but for the occurrence of a Disrupted Day, would have been a Valuation Date provided that any failure to give, or non-receipt of, such notice will not affect the validity of any such Disrupted Day.

## **9. Potential Adjustment Event**

**"Potential Adjustment Event"** means any of the following:

- (i) a subdivision, consolidation or reclassification of relevant Fund Shares (unless resulting in a Merger Event or Tender Offer), or a free distribution or dividend of any such Fund Shares to existing holders by way of bonus, capitalisation or similar issue;

- (ii) a distribution, issue or dividend to existing holders of the relevant Fund Shares of (i) such Fund Shares or (ii) other share capital or securities granting the right to payment of dividends and/or the proceeds of liquidation of the ETF equally or proportionately with such payments to holders of such Fund Shares or (iii) share capital or other securities of another issuer acquired or owned (directly or indirectly) by the ETF as a result of a spin-off or other similar transaction, or (iv) any other type of securities, rights or warrants or other assets in any case for payment (cash or other consideration) at less than the prevailing market price as determined by the Calculation Agent;
- (iii) an extraordinary dividend as determined by the Calculation Agent;
- (iv) a call by the ETF in respect of relevant Fund Shares that are not fully paid;
- (v) a repurchase by the ETF or any of its subsidiaries of relevant Fund Shares, whether out of profits or capital and whether the consideration for such repurchase is cash, securities or otherwise;
- (vi) in respect of an ETF, an event that results in any shareholder rights being distributed or becoming separated from Fund Shares of common stock or other shares of the capital stock of the ETF pursuant to a shareholder rights plan or arrangement directed against hostile takeovers that provides upon the occurrence of certain events for a distribution of preferred stock, warrants, debt instruments or stock rights at a price below their market value, as determined by the Calculation Agent, provided that any adjustment effected as a result of such an event shall be readjusted upon any redemption of such rights; or
- (vii) any other event that may have a diluting or concentrative effect on the theoretical value of the relevant Fund Shares.

Following a Potential Adjustment Event, the Calculation Agent will, in its sole and absolute discretion, determine whether such Potential Adjustment Event has a diluting or concentrative effect on the theoretical value of the relevant Fund Shares and, if so, will (a) make the corresponding adjustment(s), if any, to any one or more of the terms of the Terms and Conditions of the Securities and/or the applicable Final Terms as the Calculation Agent determines appropriate to account for that diluting or concentrative effect and (b) determine the effective date(s) of that adjustment(s). The Calculation Agent may, but need not, determine the appropriate adjustment(s) by reference to the adjustment(s) in respect of such Potential Adjustment Event made by an options exchange to options on the relevant Fund Shares traded on such options exchange.

Upon the making of any such adjustment, the Calculation Agent shall as soon as is reasonably practicable under the circumstances give notice to the Holders in accordance with Note Condition 13 in the case of Notes or W&C Securities Condition 10 in the case of W&C Securities, as applicable, stating the adjustment made and giving brief details of the Potential Adjustment Event, provided that any failure to give, or non-receipt of, such notice will not affect the validity of any such adjustment.

#### **10. De-Listing, Insolvency, Material Underlying Event, Merger Date, Merger Event, Nationalisation, Tender Offer**

**"De-Listing"** means, in respect of a Fund Share, that the relevant Exchange announces that pursuant to the rules of such Exchange, such Fund Share ceases (or will cease) to be listed, traded or publicly quoted on such Exchange for any reason (other than a Merger Event or Tender Offer) and are not immediately re-listed, re-traded or re-quoted on an exchange or quotation system located in the same country as the Exchange (or, where the Exchange is within the European Union, in a member state of the European Union).

**"Insolvency"** means that by reason of the voluntary or involuntary liquidation, bankruptcy, insolvency, dissolution or winding-up of or any analogous proceeding affecting an ETF, (A) all the



Fund Shares of that ETF are required to be transferred to a trustee, liquidator or other similar official or (B) holders of the Fund Shares of that ETF become legally prohibited from transferring them.

**"Material Underlying Event"** means any of the following:

- (i) the investment objectives and/or policies in respect of the ETF are materially changed;
- (ii) an illegality occurs or a relevant authorisation or licence is revoked in respect of the ETF and/or the ETF is required by a competent authority (other than any holder of the Fund Shares) to redeem any Fund Shares;
- (iii) there is a change in any relevant jurisdiction in respect of any payments made by the ETF in respect of any Fund Share as a result of which the amounts paid or to be paid by the Issuer in connection with hedging arrangements relating to the Securities are materially reduced or otherwise adversely affected; and/or
- (iv) any other event occurs in relation to the ETF and/or the Fund Shares which is materially prejudicial to the Issuer in connection with the issue of the Securities or any hedging arrangements relating to the Securities,

as determined by the Calculation Agent.

**"Merger Date"** means the closing date of a Merger Event or, where a closing date cannot be determined under the local law applicable to such Merger Event, such other date as determined by the Calculation Agent.

**"Merger Event"** means, in respect of any relevant Fund Shares, any (i) reclassification or change of such Fund Shares that results in a transfer of or an irrevocable commitment to transfer all of such Fund Shares outstanding to another entity or person, (ii) consolidation, amalgamation, merger or binding share exchange of the ETF with or into another entity or person (other than a consolidation, amalgamation, merger or binding share exchange in which such ETF is the continuing entity and which does not result in any such reclassification or change of all such Fund Shares outstanding) or (iii) takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person to purchase or otherwise obtain 100% of the outstanding Fund Shares of the relevant ETF that results in a transfer of or an irrevocable commitment to transfer all such Fund Shares (other than such Fund Shares owned or controlled by such other entity or person), or (iv) consolidation, amalgamation, merger or binding share exchange of the ETF or its subsidiaries with or into another entity in which the ETF is the continuing entity and which does not result in a reclassification or change of all such Fund Shares outstanding but results in the outstanding Fund Shares (other than Fund Shares owned or controlled by such other entity) immediately prior to such event collectively representing less than 50% of the outstanding Fund Shares immediately following such event (a **"Reverse Merger"**), in each case if the Merger Date is on or before the Valuation Date.

**"Nationalisation"** means that all the Fund Shares or all or substantially all the assets of an ETF are nationalised, expropriated or are otherwise required to be transferred to any governmental agency, authority, entity or instrumentality thereof.

**"Tender Offer"** means a takeover offer, tender offer, exchange offer, solicitation, proposal or other event by any entity or person that results in such entity or person purchasing, or otherwise obtaining or having the right to obtain, by conversion or other means, greater than 10% and less than 100% of the outstanding voting shares of the relevant ETF, as determined by the Calculation Agent, based upon the making of filings with governmental or self-regulatory agencies or such other information as the Calculation Agent deems relevant.

**"Tender Offer Date"** means, in respect of a Tender Offer, the date on which voting shares in the amount of the applicable percentage threshold are actually purchased or otherwise obtained (as determined by the Calculation Agent).

If a De-Listing, Merger Event, Tender Offer, Nationalisation, Insolvency or Material Underlying Event occurs in relation to any Fund Share, the Issuer in its sole and absolute discretion may take the action described in (i), (ii) or (iii) below:

- (i) require the Calculation Agent, in its sole and absolute discretion, to determine the appropriate adjustment(s), if any, to be made to any one or more of the terms of the Terms and Conditions and/or the applicable Final Terms to account for the De-Listing, Merger Event, Tender Offer, Nationalisation, Insolvency or Material Underlying Event, as the case may be, and determine the effective date(s) of that adjustment(s). The Calculation Agent may (but need not) determine the appropriate adjustment(s) by reference to the adjustment(s) in respect of the De-Listing, Merger Event, Tender Offer, Nationalisation, Insolvency or Material Underlying Event made by any options exchange to options on the relevant Fund Share traded on that options exchange;
- (ii)
  - (A) in the case of Notes give notice to the Noteholders in accordance with Note Condition 13, and redeem all, but not some only, of the Notes, each nominal amount of Notes equal to the Calculation Amount being redeemed at the Early Redemption Amount, or
  - (B) in the case of W&C Securities cancel the W&C Securities by giving notice to Holders in accordance with Condition 10. If the W&C Securities are so cancelled the Issuer will pay an amount to each Holder in respect of each W&C Security, or Unit, as the case may be, held by him which amount shall be the fair market value of a W&C Security, or Unit, as the case may be, taking into account the Merger Event, Tender Offer, De-listing, Nationalisation, Insolvency or Material Underlying Event, as the case may be, less the cost to the Issuer and/or any of its Affiliates or agents of unwinding any underlying related hedging arrangements (including any cost of funding in respect of such hedging arrangements) plus, in the case of Warrants, if already paid, the Exercise Price, all as determined by the Calculation Agent in its sole and absolute discretion. Payments will be made in such manner as shall be notified to the Holders in accordance with Condition 10; or
- (iii) following such adjustment to the settlement terms of options on the Fund Shares traded on such exchange(s) or quotation system(s) as the Issuer in its sole discretion shall select (the "**Options Exchange**"), require the Calculation Agent to make a corresponding adjustment to any one or more of the terms of the Terms and Conditions and/or the applicable Final Terms, which adjustment will be effective as of the date determined by the Calculation Agent to be the effective date of the corresponding adjustment made by the Options Exchange. If options on the Fund Shares are not traded on the Options Exchange, the Calculation Agent will make such adjustment, if any, to any one or more of the terms of the Terms and Conditions and/or the applicable Final Terms as the Calculation Agent in its sole and absolute discretion determines appropriate, with reference to the rules and precedents (if any) set by the Options Exchange to account for the Merger Event, Tender Offer, De-listing, Nationalisation, Insolvency or Material Underlying Event, as the case may be, that in the determination of the Calculation Agent would have given rise to an adjustment by the Options Exchange if such options were so traded.

Upon the occurrence of a Merger Event, Tender Offer, De-listing, Nationalisation, Insolvency or Material Underlying Event, the Issuer shall give notice as soon as practicable to the Holders in accordance with Note Condition 13 (in the case of Notes) or W&C Securities Condition 10 (in the case of W&C Securities) stating the occurrence of the Merger Event, Tender Offer, Nationalisation, Insolvency or Material Underlying Event, as the case may be, giving details thereof and the action proposed to be taken in relation thereto provided that any failure to give, or non-receipt of, such notice will not affect the validity of any such Merger Event, Tender Offer, De-listing, Nationalisation or Insolvency, as the case may be.

## ANNEX 8

### ADDITIONAL TERMS AND CONDITIONS FOR INFLATION LINKED SECURITIES

#### 1. Interpretation

If specified as applicable in the applicable Final Terms, the terms and conditions applicable to Inflation Linked Notes shall comprise the terms and conditions of the Notes (the "**Note Conditions**") and the Additional Terms and Conditions for Inflation Linked Securities set out below (the "**Inflation Linked Conditions**"), in each case subject to completion and/or amendment in the applicable Final Terms. The terms and conditions applicable to Inflation Linked W&C Securities shall comprise the terms and conditions of the W&C Securities (the "**W&C Securities Conditions**") and the Inflation Linked Conditions, in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the Note Conditions, in the case of Notes, or the W&C Securities Conditions, in the case of W&C Securities, and the Inflation Linked Conditions, the Inflation Linked Conditions shall prevail. In the event of any inconsistency between (i) the Note Conditions or the W&C Securities Conditions and/or the Inflation Linked Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail. References in the Inflation Linked Conditions to "Security" and "Securities" shall be deemed to be references to "Note" and "Notes" or "W&C Security" and "W&C Securities" as the context admits.

#### 2. Definitions

For the purpose of the Inflation Linked Securities:

**"Cut-Off Date"** means, in respect of a Determination Date, five Business Days prior to such Determination Date, unless otherwise stated in the applicable Final Terms.

**"Delayed Index Level Event"** means, in respect of any Determination Date and an Inflation Index, that the relevant Index Sponsor fails to publish or announce the level of such Index (the "**Relevant Level**") in respect of any Reference Month which is to be utilised in any calculation or determination to be made by the Issuer in respect of such Determination Date, at any time on or prior to the Cut-Off Date.

**"Determination Date"** means each date specified as such in the applicable Final Terms.

**"Fallback Bond"** means, in respect of an Inflation Index, a bond selected by the Calculation Agent and issued by the government of the country to whose level of inflation the relevant Inflation Index relates and which pays a coupon or redemption amount which is calculated by reference to such Inflation Index, with a maturity date which falls on (a) the same day as the End Date as specified in the applicable Final Terms, (b) the next longest maturity after the End Date if there is no such bond maturing on the End Date, or (c) the next shortest maturity before the End Date if no bond defined in (a) or (b) is selected by the Calculation Agent. If the relevant Inflation Index relates to the level of inflation across the European Monetary Union, the Calculation Agent will select an inflation-linked bond that is a debt obligation of one of the governments (but not any government agency) of France, Italy, Germany or Spain and which pays a coupon or redemption amount which is calculated by reference to the level of inflation in the European Monetary Union. In each case, the Calculation Agent will select the Fallback Bond from those inflation linked bonds issued on or before the Issue Date and, if there is more than one inflation-linked bond maturing on the same date, the Fallback Bond shall be selected by the Calculation Agent from those bonds. If the Fallback Bond redeems, the Calculation Agent will select a new Fallback Bond on the same basis, but selected from all eligible bonds in issue at the time the original Fallback Bond redeems (including any bond for which the redeemed bond is exchanged).

**"Inflation Index"** means each inflation index specified in the applicable Final Terms and related expressions shall be construed accordingly.

**"Inflation Index Sponsor"** means, in relation to an Inflation Index, the entity that publishes or announces (directly or through an agent) the level of such Inflation Index which, as of the Issue Date, is the Inflation Index Sponsor specified in the applicable Final Terms.

**"Reference Month"** means the calendar month for which the level of the Inflation Index was reported, regardless of when this information is published or announced. If the period for which the Relevant Level was reported is a period other than a month, the Reference Month shall be the period for which the Relevant Level was reported.

**"Related Bond"** means, in respect of an Inflation Index, the bond specified as such in the applicable Final Terms. If the Related Bond specified in the applicable Final Terms is "Fallback Bond", then, for any Related Bond determination, the Calculation Agent shall use the Fallback Bond. If no bond is specified in the applicable Final Terms as the Related Bond and "Fallback Bond: Not Applicable" is specified in the applicable Final Terms there will be no Related Bond. If a bond is selected as the Related Bond in the applicable Final Terms and that bond redeems or matures before the End Date, unless "Fallback Bond: Not Applicable" is specified in the applicable Final Terms, the Calculation Agent shall use the Fallback Bond for any Related Bond determination.

### 3. Inflation Index Adjustments

#### (a) Delay in Publication

If the Calculation Agent determines that a Delayed Index Level Event in respect of an Index has occurred with respect to any Determination Date, then the Relevant Level for such Index the subject of such Delayed Index Event (the **"Substitute Index Level"**) shall be determined by the Calculation Agent as follows:

- (i) if Related Bond is specified as applicable for such Index in the relevant Final Terms, the Calculation Agent shall determine the Substitute Index Level by reference to the corresponding index level determined under the terms and conditions of the relevant Related Bond; or
- (ii) if (I) Related Bond is not specified as applicable for such Index in the relevant Final Terms, or (II) the Calculation Agent is not able to determine a Substitute Index Level under (i) above, the Calculation Agent shall determine the Substitute Index Level by reference to the following formula:

$$\text{Substitute Index Level} = \text{Base Level} \times (\text{Latest Level} / \text{Reference Level})$$

where:

**"Base Level"** means, in respect of an Inflation Index, the level of such Inflation Index (excluding any "flash" estimates) published or announced by the relevant Inflation Index Sponsor in respect of the month which is 12 calendar months prior to the month for which the Substitute Index Level is being determined.

**"Latest Level"** means, in respect of an Inflation Index, the latest level of such Inflation Index (excluding any "flash" estimates) published or announced by the relevant Inflation Index Sponsor prior to the month in respect of which the Substitute Index Level is being determined.

**"Reference Level"** means, in respect of an Inflation Index, the level of such Inflation Index (excluding any "flash" estimates) published or announced by the relevant Inflation Index Sponsor in respect of the month that is 12 calendar months prior to the month in respect of the Latest Level.

The Issuer shall give notice to Holders in accordance with Note Condition 13, or W&C Securities Condition 10, as applicable, of any Substitute Index Level calculated pursuant to this Inflation Linked Condition 3.

(b) Cessation of Publication

If a level for the Inflation Index has not been published or announced for two consecutive months or the Inflation Index Sponsor announces that it will no longer continue to publish or announce the Inflation Index then the Calculation Agent shall determine a successor index (in lieu of any previously applicable Inflation Index) for the purposes of the Inflation Linked Securities by using the following methodology:

- (i) if at any time, a successor index has been designated by the Calculation Agent pursuant to the terms and conditions of the Related Bond, such successor index shall be designated a "Successor Index" notwithstanding that any other Successor Index may previously have been determined under paragraphs (ii), (iii) or (iv) below; or
- (ii) if a Successor Index has not been determined pursuant to Inflation Linked Condition 3(b)(i) and Inflation Linked Condition 3(b)(ii) a notice has been given or an announcement has been made by the Inflation Index Sponsor, specifying that the Inflation Index will be superseded by a replacement Inflation Index specified by the Inflation Index Sponsor, and the Calculation Agent determines that such replacement index is calculated using the same or substantially similar formula or method of calculation as used in the calculation of the previously applicable Inflation Index, such replacement index shall be the Inflation Index for purposes of the Inflation Linked Securities from the date that such replacement Inflation Index comes into effect; or
- (iii) if a Successor Index has not been determined pursuant to Inflation Linked Condition 3(b)(i), the Calculation Agent shall ask five leading independent dealers to state what the replacement index for the Inflation Index should be. If between four and five responses are received, and of those four or five responses, three or more leading independent dealers state the same index, this index will be deemed the "Successor Inflation Index". If three responses are received, and two or more leading independent dealers state the same index, this index will be deemed the "Successor Inflation Index". If fewer than three responses are received, the Calculation Agent will proceed to Inflation Linked Condition 3(b)(iv); or
- (iv) if no replacement index or Successor Inflation Index has been deemed under Inflation Linked Conditions 3(b)(i), 3(b)(ii) or 3(b)(iii), by the next occurring Cut-Off Date the Calculation Agent will determine an appropriate alternative index from such Cut-Off Date, and such index will be deemed a "Successor Inflation Index"; or
- (v)
  - (A) if the Calculation Agent determines that there is no appropriate alternative index, in relation to Notes, the Issuer shall give notice to the Holders in accordance with Note Condition 13 and redeem all (but not some only) of the Notes, each nominal amount of Notes equal to the Calculation Amount being redeemed at the Early Redemption Amount; or
  - (B) in relation to W&C Securities, the Issuer shall give notice to the Holders in accordance with W&C Securities Condition 10 and cancel the W&C Securities. If the W&C Securities are so cancelled the Issuer will pay an amount to each Holder in respect of each W&C Security or Unit, as the case may be, held by him which amount shall be the fair market value of a W&C Security or a Unit, as the case may be, less the cost to the Issuer and/or any of its Affiliates or agents of unwinding any underlying related hedging arrangements (including any cost of funding in respect of such hedging arrangements), all as determined by the Calculation Agent in its sole and absolute discretion. Payments will be made in such manner as shall be notified to the Holders in accordance with W&C Securities Condition 10.

(c) Rebasing of the Inflation Index

If the Calculation Agent determines that the Inflation Index has been or will be rebased at any time, the Inflation Index as so rebased (the "**Rebased Index**") will be used for purposes of determining the level of the Inflation Index from the date of such rebasing; provided, however, that the Calculation Agent shall make adjustments as are made by the calculation agent pursuant to the terms and

conditions of the Related Bond, if Related Bond is specified as applicable in the applicable Final Terms, to the levels of the Rebased Index so that the Rebased Index levels reflect the same rate of inflation as the Index before it was rebased, or, if Related Bond is not specified as applicable in the applicable Final Terms the Calculation Agent shall make adjustments to the levels of the Rebased Index so that the Rebased Index levels reflect the same rate of inflation as the Inflation Index before it was rebased.

(d) **Material Modification Prior to Last Occurring Cut-Off**

If, on or prior to the last occurring Cut-Off Date, the Inflation Index Sponsor announces that it will make a material change to the Inflation Index then the Calculation Agent shall make any such adjustments, if Related Bond is specified as applicable in the applicable Final Terms, consistent with adjustments made to the Related Bond, or, if Related Bond is not specified as applicable in the applicable Final Terms, only those adjustments to the Inflation Index necessary for the modified Inflation Index to continue as the Inflation Index.

## ANNEX 9

### ADDITIONAL TERMS AND CONDITIONS FOR CREDIT LINKED NOTES AND CERTIFICATES

#### 1. Interpretation

If specified as applicable in the applicable Final Terms, the terms and conditions applicable to Credit Linked Notes shall comprise the terms and conditions of the Notes (the "**Note Conditions**") and the Additional Terms and Conditions for Credit Linked Notes and Certificates set out below (the "**Credit Linked Conditions**"), in each case subject to completion and/or amendment in the applicable Final Terms. The terms and conditions applicable to Credit Linked Certificates shall comprise the terms and conditions of the W&C Securities (the "**W&C Securities Conditions**") and the Credit Linked Conditions, in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the Note Conditions, in the case of Notes, or the W&C Securities Conditions, in the case of Credit Linked Certificates, the Credit Linked Notes and Certificates Conditions shall prevail. In the event of any inconsistency between (i) the Note Conditions or the W&C Securities Conditions and/or the Credit Linked Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail. References in the Inflation Linked Conditions to "Security" and "Securities" shall be deemed to be references to "Note" and "Notes" or "W&C Security" and "W&C Securities" as the context admits.

#### 2. Definitions

"**Accreted Amount**" means, with respect to an Accreting Obligation, an amount equal to (a) the sum of (i) the original issue price of such obligation and (ii) the portion of the amount payable at maturity that has accreted in accordance with the terms of the obligation (or as otherwise described below), less (b) any cash payments made by the obligor thereunder that, under the terms of such obligation, reduce the amount payable at maturity (unless such cash payments have been accounted for in (a)(ii) above), in each case calculated as of the earlier of (A) the date on which any event occurs that has the effect of fixing the amount of a claim in respect of principal and (B) the Delivery Date or applicable Valuation Date, as the case may be. Such Accreted Amount shall include any accrued and unpaid periodic cash interest payments (as determined by the Calculation Agent in its sole and absolute discretion) only if "Include Accrued Interest" is specified as applicable in the applicable Final Terms. If an Accreting Obligation is expressed to accrete pursuant to a straight-line method or if such Obligation's yield to maturity is not specified in, nor implied from, the terms of such Obligation, then, for the purposes of (a)(ii) above, the Accreted Amount shall be calculated using a rate equal to the yield to maturity of such Obligation. Such yield shall be determined on a semi-annual bond equivalent basis using the original issue price of such obligation and the amount payable at the scheduled maturity of such obligation, and shall be determined as of the earlier of (A) the date on which any event occurs that has the effect of fixing the amount of a claim in respect of principal and (B) the Delivery Date or applicable Valuation Date, as the case may be. The Accreted Amount shall exclude, in the case of an Exchangeable Obligation, any amount that may be payable under the terms of such obligation in respect of the value of the Equity Securities for which such obligation is exchangeable.

"**Accreting Obligation**" means any obligation (including, without limitation, a Convertible Obligation or an Exchangeable Obligation), the terms of which expressly provide for an amount payable upon acceleration equal to the original issue price (whether or not equal to the face amount thereof) plus an additional amount or amounts (on account of original issue discount or other accruals of interest or principal not payable on a periodic basis) that will or may accrete, whether or not (a) payment of such additional amounts is subject to a contingency or determined by reference to a formula or index, or (b) periodic cash interest is also payable.

**"Bankruptcy" means a Reference Entity:**

- (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 in a judicial, regulatory or administrative proceeding or filing 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 a proceeding seeking a judgment 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 (i) results in a judgment 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 or before the Actual Exercise Date (in the case of Credit Linked Certificates) or Maturity Date (in the case of Credit Linked Notes), whichever is earlier;
- (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 or before the Actual Exercise Date (in the case of Credit Linked Certificates) or Maturity Date (in the case of Credit Linked Notes), whichever is earlier; or
- (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has any analogous effect to any of the events specified in clauses (a) to (g) (inclusive).

**"Best Available Information" means:**

- (i) in the case of a Reference Entity which files information with its primary securities regulator or primary stock exchange that includes unconsolidated *pro forma* financial information which assumes that the relevant Succession Event has occurred or which provides such information to its shareholders, creditors or other persons whose approval of the Succession Event is required, that unconsolidated *pro forma* financial information and, if provided subsequently to the provision of unconsolidated *pro forma* financial information but before the Calculation Agent makes its determination for the purposes of the definition of "Successor", other relevant information that is contained in any written communication provided by the Reference Entity to its primary securities regulator, primary stock exchange, shareholders, creditors or other persons whose approval of the Succession Event is required; or
- (ii) in the case of a Reference Entity which does not file with its primary securities regulators or primary stock exchange, or which does not provide to shareholders, creditors or other persons whose approval of the Succession Event is required, the information contemplated in (i) above, the best publicly available information at the disposal of the Calculation Agent to allow it to make a determination for the purposes of the definition of "Successor".

Information which is made available more than 14 calendar days after the legally effective date of the Succession Event shall not constitute "Best Available Information".



**"Conditionally Transferable Obligation"** means a Deliverable Obligation that is either Transferable, in the case of Bonds, or capable of being assigned or novated to all Modified Eligible Transferees without the consent of any person being required, in the case of any Deliverable Obligation other than Bonds, provided, however, that a Deliverable Obligation other than Bonds will be a Conditionally Transferable Obligation notwithstanding that consent of the Reference Entity or the guarantor, if any, of a Deliverable Obligation other than Bonds (or the consent of the relevant obligor if a Reference Entity is guaranteeing such Deliverable Obligation) or any agent is required for such novation, assignment or transfer so long as the terms of such Deliverable Obligation provide that such consent may not be unreasonably withheld or delayed. Any requirement that notification of novation, assignment or transfer of a Deliverable Obligation be provided to a trustee, fiscal agent, administrative agent, clearing agent or paying agent for a Deliverable Obligation shall not be considered to be a requirement for consent for purposes of this definition of "Conditionally Transferable Obligation".

For purposes of determining whether a Deliverable Obligation satisfies the requirements of the definition of Conditionally Transferable Obligation, such determination shall be made as of the Delivery Date for the Deliverable Obligation, taking into account only the terms of the Deliverable Obligation and any related transfer or consent documents which have been obtained by the Issuer or the Guarantor, as the case may be.

**"Conditions to Settlement"** means the delivery by the Calculation Agent to the Issuer of a Credit Event Notice that is effective and if Notice of Publicly Available Information is specified as applying in the applicable Final Terms, a Notice of Publicly Available Information, that is effective, in each case, during the Notice Delivery Period.

**"Convertible Obligation"** means any obligation that is convertible, in whole or in part, into Equity Securities solely at the option of holders of such obligation or a trustee or similar agent acting for the benefit only of holders of such obligation (or the cash equivalent thereof, whether the cash settlement option is that of the issuer or of (or for the benefit of) the holders of such obligation).

**"Credit Cut-off Date"** means, in the case of Credit Linked Certificates, the day falling 10 Business Days following the receipt (or deemed receipt) of the relevant Notice of Physical Settlement or such other Credit Cut-off Date as is specified in the applicable Final Terms.

**"Credit Event"** means the occurrence of any one or more of the Credit Events specified in the applicable Final Terms which may include Bankruptcy, Failure to Pay, Obligation Acceleration, Obligation Default, Repudiation/Moratorium or Restructuring, or any additional Credit Event specified in the applicable Final Terms, as determined by the Calculation Agent.

If an occurrence would otherwise constitute a Credit Event, such occurrence will constitute a Credit Event whether or not such occurrence arises directly or indirectly from, or is subject to a defence based upon:

- (a) any lack or alleged lack of authority or capacity of a Reference Entity to enter into any Obligation or, as applicable, an Underlying Obligor to enter into any Underlying Obligation;
- (b) any actual or alleged unenforceability, illegality, impossibility or invalidity with respect to any Obligation or, as applicable, any Underlying Obligation, however described;
- (c) any applicable law, order, regulation, decree or notice, however described, or the promulgation of, or any change in, the interpretation by any court, tribunal, regulatory authority or similar administrative or judicial body with competent or apparent jurisdiction of any applicable law, order, regulation, decree or notice, however described; or
- (d) the imposition of, or any change in, any exchange controls, capital restrictions or any other similar restrictions imposed by any monetary or other authority, however described.

**"Credit Event Notice"** means an irrevocable notice from the Calculation Agent (which may be by telephone) to the Issuer (which the Calculation Agent has the right but not the obligation to deliver)

that describes a Credit Event that occurred at or after 12.01 a.m. Greenwich Mean Time on the Trade Date and at or prior to 11.59 p.m., Greenwich Mean Time, on the latest of:

- (a) the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes);
- (b) where "Grace Period Extension" is specified as applicable in the applicable Final Terms, the Grace Period Extension Date if (i) the Credit Event that is the subject of the Credit Event Notice is a Failure to Pay that occurs after the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes); and (ii) the Potential Failure to Pay with respect to such Failure to Pay occurs at or prior to 11.59 p.m., Greenwich Mean Time, on the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes); and
- (c) the Repudiation/Moratorium Evaluation Date if:
  - (i) the Credit Event that is the subject of the Credit Event Notice is a Repudiation/Moratorium that occurs after the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes);
  - (ii) the Potential Repudiation/Moratorium with respect to such Repudiation/Moratorium occurs at or prior to 11.59 p.m., Greenwich Mean Time, on the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes); and
  - (iii) the Repudiation/Moratorium Extension Condition is satisfied.

A Credit Event Notice must contain a description in reasonable detail of the facts relevant to the determination that a Credit Event has occurred. The Credit Event that is the subject of the Credit Event Notice need not be continuing on the date the Credit Event Notice is effective.

**"Credit Event Redemption Amount"** means the amount specified as such in the applicable Final Terms or if no such amount is specified in the applicable Final Terms, an amount calculated by the Calculation Agent equal to:

$$(A \times B) - C$$

where:

A is the Calculation Amount (in the case of Credit Linked Notes) or the Notional Amount of each Certificate (in the case of Credit Linked Certificates);

B is the Final Price; and

C is Unwind Costs,

provided that in no event shall the Credit Event Redemption Amount be less than zero.

**"Credit Event Redemption Date"** means the day falling the number of Business Days specified in the applicable Final Terms after the calculation of the Final Price.

**"Credit Settlement Date"** means the last day of the longest Physical Settlement Period following the satisfaction of Conditions to Settlement (the **"Scheduled Credit Settlement Date"**) Provided That if a Hedge Disruption Event has occurred and is continuing on the second Business Day immediately preceding the Scheduled Credit Settlement Date, the Credit Settlement Date shall be the earlier of (i) the second Business Day following the date on which no Hedge Disruption Event subsists and (ii) the day falling 60 Business Days following the Scheduled Credit Settlement Date.

**"Currency Amount"** means, whenever an amount is denominated in a currency other than the Settlement Currency and is specified to be determined by reference to a Currency Amount, such amount converted to the relevant Settlement Currency using the Currency Rate.

**"Currency Rate"** means:

- (a) the rate determined by the Calculation Agent equal to the rate of conversion of the currency of the Deliverable Obligation into the Settlement Currency by reference to:
  - (i) if the Settlement Currency is U.S. dollars, the Federal Reserve Bank of New York 10:00 a.m. (New York time) mid-point rate as displayed on Reuters page FEDSPOT on the date that the Notice of Physical Settlement is deemed given, or on such date and in such other commercially reasonable manner as it shall determine; or
  - (ii) if the Settlement Currency is euro, the MEAN price as displayed on Reuters Page EUROFX/1 as of 12:00 p.m. (London time) on the date that the Notice of Physical Settlement is deemed given, or on such date and in such other commercially reasonable manner as it shall determine; or
- (b) if the Settlement Currency is not U.S. dollars or euro, the rate determined by the Calculation Agent in its sole and absolute discretion in a commercially reasonable manner.

**"Default Requirement"** means the amount specified as such in the applicable Final Terms or its equivalent in the relevant Obligation Currency or, if a Default Requirement is not specified in the applicable Final Terms, US\$10,000,000, or its equivalent as calculated by the Calculation Agent in the relevant Obligation Currency, in either case, as of the occurrence of the relevant Credit Event.

**"Deliver"** means to deliver, novate, transfer (including, in the case of a Qualifying Guarantee, transfer of the benefit of the Qualifying Guarantee), assign or sell, as appropriate, in the manner customary for the settlement of the applicable Deliverable Obligations (which shall include executing all necessary documentation and taking any other necessary actions), in order to convey all right, title and interest in the Entitlement to the relevant Holder free and clear of any and all liens, charges, claims or encumbrances (including without limitation any counterclaim, defence (other than a counterclaim or defense based on the factors set out in (a) to (d) in the definition of "Credit Event" above or right of set-off by or of the Reference Entity or, as applicable, an Underlying Obligor) provided that if all or a portion of the Entitlement consists of Direct Loan Participations, "Deliver" means to create (or procure the creation) of a participation in favour of the relevant Holder and to the extent that the Deliverable Obligations consist of Qualifying Guarantees, "Deliver" means to Deliver both the Qualifying Guarantee and the Underlying Obligation. "Delivery" and "Delivered" will be construed accordingly. In the case of a Loan, Delivery shall be effected using documentation substantially in the form of the documentation customarily used in the relevant market for Delivery of such Loan at that time;

**"Deliverable Obligation"** means, subject as provided in Credit Linked Condition 5:

- (a) any obligation of a Reference Entity (either directly, as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the applicable Final Terms, as provider of any Qualifying Guarantee) determined pursuant to the method described in "(A) Method for Determining Deliverable Obligations" below (but excluding any Excluded Deliverable Obligation specified in the applicable Final Terms) that (i) is payable in an amount equal to its Outstanding Principal Balance or Due and Payable Amount, as applicable, (ii) is not subject to any counterclaim, defence (other than a counterclaim or defence based on the factors set forth in paragraphs (a) to (d) of the definition of "Credit Event" above)) or right of set-off by or of a Reference Entity or, as applicable, an Underlying Obligor and (iii) in the case of a Qualifying Guarantee other than a Qualifying Affiliate Guarantee, is capable, at the date on which the Notice of Physical Settlement is deemed given, of immediate assertion or demand by or on behalf of the holder or holders against the Reference Entity for an amount at least equal to the Outstanding Principal Balance or Due and Payable Amount being Delivered apart from the giving of any notice of non-payment or similar procedural requirement, it being understood that acceleration of an Underlying Obligation shall not be considered a procedural requirement;

- (b) subject to the second paragraph of the definition of "Not Contingent" in "(A) below Method for Determining Deliverable Obligations" below, each Reference Obligation, unless specified in the applicable Final Terms as an Excluded Deliverable Obligation;
- (c) solely in relation to a Restructuring Credit Event applicable to a Sovereign Reference Entity, any Sovereign Restructured Deliverable Obligation (but excluding any Excluded Deliverable Obligation) that (i) is payable in an amount equal to its Outstanding Principal Balance or Due and Payable Amount, as applicable, (ii) is not subject to any counterclaim, defence (other than a counterclaim or defence based on the factors set forth in paragraphs (a)-(d) of the definition of "Credit Event" above) or right of set-off by or of a Reference Entity or, as applicable, an Underlying Obligor and (iii) in the case of a Qualifying Guarantee other than a Qualifying Affiliate Guarantee, is capable, at the date on which the Notice of Physical Settlement is deemed given, of immediate assertion or demand by or on behalf of the holder or holders against the Reference Entity for an amount at least equal to the Outstanding Principal Balance or Due and Payable Amount being Delivered apart from the giving of any notice of non-payment or similar procedural requirement, it being understood that acceleration of an Underlying Obligation shall not be considered a procedural requirement; and
- (d) any Additional Deliverable Obligation of a Reference Entity specified as such in the applicable Final Terms.
- (A) **Method for Determining Deliverable Obligations.** For the purposes of this definition of "Deliverable Obligation", the term "Deliverable Obligation" may be defined as each obligation of each Reference Entity described by the Deliverable Obligation Category specified in the applicable Final Terms, and, subject to (B)(3) below, having each of the Deliverable Obligation Characteristics, if any, specified in the applicable Final Terms, in each case, as of the date on which the Notice of Physical Settlement is deemed given. The following terms shall have the following meanings:
  - (1) **"Deliverable Obligation Category"** means one of Payment, Borrowed Money, Reference Obligations Only, Bond, Loan, or Bond or Loan (each as defined in the definition of "Obligation" below, except that, for the purpose of determining Deliverable Obligations, the definition of "Reference Obligations Only" shall be amended to state that no Deliverable Obligation Characteristics shall be applicable to Reference Obligations Only).
  - (2) **"Deliverable Obligation Characteristics"** means any one or more of Not Subordinated, Specified Currency, Not Sovereign Lender, Not Domestic Currency, Not Domestic Law, Listed, Not Domestic Issuance (each as defined in the definition of "Obligation" below), Not Contingent, Assignable Loan, Consent Required Loan, Direct Loan Participation, Transferable, Maximum Maturity, Accelerated or Matured and Not Bearer where:
    - (i) **"Not Contingent"** means any obligation having as of the Delivery Date and all times thereafter an Outstanding Principal Balance or, in the case of obligations that are not Borrowed Money, a Due and Payable Amount, that pursuant to the terms of such obligation may not be reduced as a result of the occurrence or non-occurrence of an event or circumstance (other than payment). A Convertible Obligation, an Exchangeable Obligation and an Accreting Obligation shall constitute Deliverable Obligations that are Not Contingent if such Deliverable Obligation otherwise meets the requirements of the preceding sentence so long as, in the case of a Convertible Obligation or an Exchangeable Obligation, the right (x) to convert or exchange such obligation or (y) to require the issuer to purchase or redeem such obligation (if the issuer has exercised or may exercise the right to pay the purchase or redemption price, in whole or in part, in Equity Securities) has not been exercised (or such exercise has been effectively rescinded) on or before the Delivery Date.

If a Reference Obligation is a Convertible Obligation or an Exchangeable Obligation, then such Reference Obligation may be included as a Deliverable Obligation only if the rights referred to in clauses (x) and (y) of the preceding paragraph have not been exercised (or such exercise has been effectively rescinded) on or before the Delivery Date;

- (ii) **"Assignable Loan"** means a Loan that is capable of being assigned or novated to, at a minimum, commercial banks or financial institutions (irrespective of their jurisdiction or organisation) that are not then a lender or a member of the relevant lending syndicate, without the consent of the relevant Reference Entity or the guarantor, if any, of such Loan (or the consent of the applicable borrower if a Reference Entity is guaranteeing such Loan) or any agent;
- (iii) **"Consent Required Loan"** means a Loan that is capable of being assigned or novated with the consent of the relevant Reference Entity or the guarantor, if any, of such Loan (or the consent of the relevant borrower if a Reference Entity is guaranteeing such loan) or any agent;
- (iv) **"Direct Loan Participation"** means a Loan in respect of which, pursuant to a participation agreement, the Issuer is capable of creating, or procuring the creation of, a contractual right in favour of each Holder that provides each Holder with recourse to the participation seller for a specified share in any payments due under the relevant Loan which are received by such participation seller, any such agreement to be entered into between each Holder and either (A) the Issuer or the Guarantor (as applicable) (in either case, to the extent that the Issuer or the Guarantor, as applicable, is then a lender or a member of the relevant lending syndicate), or (B) a Qualifying Participation Seller (if any) (to the extent such Qualifying Participation Seller is then a lender or a member of the relevant lending syndicate);
- (v) **"Transferable"** means an obligation that is transferable to institutional investors without any contractual, statutory or regulatory restriction, provided that none of the following shall be considered contractual, statutory or regulatory restrictions:
  - (a) contractual, statutory or regulatory restrictions that provide for eligibility for resale pursuant to Rule 144A or Regulation S promulgated under the United States Securities Act of 1933, as amended (and any contractual, statutory or regulatory restrictions promulgated under the laws of any jurisdiction having a similar effect in relation to the eligibility for resale of an obligation); or
  - (b) restrictions on permitted investments such as statutory or regulatory investment restrictions on insurance companies and pension funds;
- (vi) **"Maximum Maturity"** means an obligation that has a remaining maturity from the Settlement Date of not greater than the period specified in the applicable Final Terms;
- (vii) **"Accelerated or Matured"** means an obligation under which the total amount owed, whether at maturity, by reason of acceleration, upon termination or otherwise (other than amounts in respect of default interest, indemnities, tax gross-ups and other similar amounts), is, or on or prior to the Delivery Date will be, due and payable in full in accordance with the terms of such obligation, or would have been but for, and without regard to, any limitation imposed under any applicable insolvency laws; and
- (viii) **"Not Bearer"** means any obligation that is not a bearer instrument unless interests with respect to such bearer instrument are cleared via Euroclear, Clearstream, Luxembourg or any other internationally recognised clearing system.

**(B) Interpretation of Provisions**

- (1) If the Obligation Characteristic "Listed" is specified in the applicable Final Terms, the Final Terms shall be construed as though Listed had been specified as an Obligation Characteristic only with respect to Bonds and shall only be relevant if Bonds are covered by the selected Obligation Category;
- (2) if (i) either of the Deliverable Obligation Characteristics "Listed" or "Not Bearer" is specified in the applicable Final Terms, the Final Terms shall be construed as though such Deliverable Obligation Characteristic had been specified as a Deliverable Obligation Characteristic only with respect to Bonds and shall only be relevant if Bonds are covered by the selected Deliverable Obligation Category; (ii) the Deliverable Obligation Characteristic "Transferable" is specified in the applicable Final Terms, the Final Terms shall be construed as though such Deliverable Obligation Characteristic had been specified as a Deliverable Obligation Characteristic only with respect to Deliverable Obligations that are not Loans (and shall only be relevant to the extent that obligations other than Loans are covered by the selected Deliverable Obligation Category); or (iii) any of the Deliverable Obligation Characteristics "Assignable Loan", "Consent Required Loan" or "Direct Loan Participation" is specified in the applicable Final Terms, the Final Terms shall be construed as though such Deliverable Obligation Characteristic had been specified as a Deliverable Obligation Characteristic only with respect to Loans and shall only be relevant if Loans are covered by the selected Deliverable Obligation Category;
- (3) if any of Payment, Borrowed Money, Loan or Bond or Loan is specified as the Deliverable Obligation Category and more than one of Assignable Loan, Consent Required Loan and Direct Loan Participation are specified as Deliverable Obligation Characteristics, the Deliverable Obligations may include any Loan that satisfies any one of such Deliverable Obligation Characteristics specified and need not satisfy all such Deliverable Obligation Characteristics; and
- (4) in the event that an Obligation or a Deliverable Obligation is a Qualifying Guarantee, the following will apply:

  - (a) For purposes of the application of the Obligation Category or the Deliverable Obligation Category, the Qualifying Guarantee shall be deemed to be described by the same category or categories as those that describe the Underlying Obligation.
  - (b) For purposes of the application of the Obligation Characteristics or the Deliverable Obligation Characteristics, both the Qualifying Guarantee and the Underlying Obligation must satisfy on the relevant date each of the applicable Obligation Characteristics or the Deliverable Obligation Characteristics, if any, specified in the applicable Final Terms from the following list: Specified Currency, Not Sovereign Lender, Not Domestic Currency and Not Domestic Law. For these purposes, unless otherwise specified in the applicable Final Terms, (x) the lawful currency of any of Canada, Japan, Switzerland, the United Kingdom or the United States of America or the euro shall not be a Domestic Currency and (y) the laws of England and the laws of the State of New York shall not be a Domestic Law.
  - (c) For purposes of the application of the Obligation Characteristics or the Deliverable Obligation Characteristics, only the Qualifying Guarantee must satisfy on the relevant date the Obligation Characteristic or the Deliverable Obligation Characteristic of Not Subordinated, if specified in the applicable Final Terms.
  - (d) For purposes of the application of the Obligation Characteristics or the Deliverable Obligation Characteristics, only the Underlying Obligation must satisfy on the relevant date each of the applicable Obligation Characteristics

or the Deliverable Obligation Characteristics, if any, specified in the applicable Final Terms from the following list: Listed, Not Contingent, Not Domestic Issuance, Assignable Loan, Consent Required Loan, Direct Loan Participation, Transferable, Maximum Maturity, Accelerated or Matured and Not Bearer.

- (e) For purposes of the application of the Obligation Characteristics or the Deliverable Obligation Characteristics to an Underlying Obligation, references to the Reference Entity shall be deemed to refer to the Underlying Obligor.
- (f) The terms "Outstanding Principal Balance" and "Due and Payable Amount" (as they are used in the Terms and Conditions, including without limitation, the definitions of "Partial Cash Settlement Amount" and "Quotation Amount" in Credit Linked Condition 10, when used in connection with Qualifying Guarantees are to be interpreted to be the then "Outstanding Principal Balance" or "Due and Payable Amount", as applicable, of the Underlying Obligation which is supported by a Qualifying Guarantee.

For the avoidance of doubt the provisions of this paragraph (B) apply in respect of the definitions of Obligation and Deliverable Obligation as the context admits.

**"Delivery Date"** means, with respect to a Deliverable Obligation, the date such Deliverable Obligation is Delivered;

**"Domestic Currency"** means the currency specified as such in the applicable Final Terms and any successor currency. If no currency is specified in the applicable Final Terms, the Domestic Currency shall be the lawful currency and any successor currency of (a) the relevant Reference Entity, if the Reference Entity is a Sovereign, or (b) the jurisdiction in which the relevant Reference Entity is organised, if the Reference Entity is not a Sovereign. In no event shall Domestic Currency include any successor currency if such successor currency is the lawful currency of any of Canada, Japan, Switzerland, the United Kingdom or the United States of America or the euro (or any successor currency to any such currency);

**"Downstream Affiliate"** means an entity, at the date of the event giving rise to the Credit Event which is the subject of the Credit Event Notice, the Delivery Date or the time of identification of a Substitute Reference Obligation (as applicable), whose outstanding Voting Shares are more than 50 per cent. owned, directly or indirectly, by the Reference Entity;

**"Due and Payable Amount"** means, subject as provided in sub-paragraph (4)(d) of paragraph (B) (Interpretation of Provisions) in the definition of "Deliverable Obligation", the amount that is due and payable under (and in accordance with the terms of) a Deliverable Obligation on the Delivery Date, whether by reason of acceleration, maturity, termination or otherwise (excluding sums in respect of default interest, indemnities, tax gross-ups and other similar amounts);

**"Eligible Transferee"** means each of the following:

- (a)
  - (i) any bank or other financial institution;
  - (ii) an insurance or reinsurance company;
  - (iii) a mutual fund, unit trust or similar collective investment vehicle (other than an entity specified in sub-paragraph (c)(i) below; and
  - (iv) a registered or licensed broker or dealer (other than a natural person or proprietorship),provided, however, in each case that such entity has total assets or at least US\$500 million;
- (b) an Affiliate of an entity specified in the preceding sub-paragraph (a);
- (c) each of a corporation, partnership, proprietorship, organisation, trust or other entity;

- (i) that is an investment vehicle (including, without limitation, any hedge fund, issuer of collateralised debt obligations, commercial paper conduit or other special purpose vehicle) that (1) has total assets of at least US\$100 million or (2) is one of a group of investment vehicles under common control or management having, in the aggregate, total assets of at least US\$100 million; or
  - (ii) that has total assets of at least US\$500 million; or
  - (iii) the obligations of which under an agreement, contract or transaction are guaranteed or otherwise supported by a letter of credit or keep well, support, or other agreement by an entity described in sub-paragraphs (a), (b), (c)(ii) or (d); and
- (d) a Sovereign, Sovereign Agency or Supranational Organisation.

All references in this definition to US\$ include equivalent amounts in other currencies;

**"Entitlement"** means, in respect of each (x) nominal amount of Notes equal to the Calculation Amount (in the case of Notes) or (y) each Certificate (in the case of Certificates), Deliverable Obligations, as selected by the Calculation Agent in its sole and absolute discretion, with:

- (i) in the case of Deliverable Obligations that are Borrowed Money, an Outstanding Principal Balance (including accrued but unpaid interest (as determined by the Calculation Agent) if "Include Accrued Interest" is specified as applying in the applicable Final Terms, but excluding accrued but unpaid interest if "Exclude Accrued Interest" is specified as applying in the applicable Final Terms, and if neither "Include Accrued Interest" nor "Exclude Accrued Interest" is specified as applying in the applicable Final Terms, excluding accrued but unpaid interest); or
- (ii) in the case of Deliverable Obligations that are not Borrowed Money, a Due and Payable Amount,

(or, in the case of either (i) or (ii), the equivalent Currency Amount of any such amount), in an aggregate amount as of the relevant Delivery Date equal to the Calculation Amount (in the case of Credit Linked Notes) or the Notional Amount of such Certificate (in the case of Credit Linked Certificates) or less, if Unwind Costs are specified as applicable in the applicable Final Terms, Deliverable Obligations with a market value determined by the Calculation Agent in its sole and absolute discretion on the Business Day selected by the Calculation Agent falling during the period from and including the Credit Event Determination Date to and including the Delivery Date equal to Unwind Costs.

If an obligation by its terms represents or contemplates an obligation to pay an amount greater than the Outstanding Principal Balance of such obligation as of the Delivery Date as a result of the occurrence or non-occurrence of an event or circumstance, the Outstanding Principal Balance of such obligation shall not include any additional amount that would be payable upon the occurrence or non-occurrence of such event or circumstance.

**"Equity Securities"** means:

- (a) in the case of a Convertible Obligation, equity securities (including options and warrants) of the issuer of such obligation or depositary receipts representing equity securities of the issuer of such obligation together with any other property distributed to or made available to holders of those equity securities from time to time; and
- (b) in the case of an Exchangeable Obligation, equity securities (including options and warrants) of a person other than the issuer of such obligation or depositary receipts representing those equity securities of a person other than the issuer of such obligation together with any other property distributed to or made available to holders of those equity securities from time to time;

**"Exchangeable Obligation"** means any obligation that is exchangeable, in whole or in part, for Equity Securities solely at the option of holders of such obligation or a trustee or similar agent acting



for the benefit only of holders of such obligation (or the cash equivalent thereof, whether the cash settlement option is that of the issuer or of (or for the benefit of) the holders of such obligation).

**"Excluded Deliverable Obligation"** means any obligation of a Reference Entity specified as such or of a type described in the applicable Final Terms.

**"Excluded Obligation"** means any obligation of a Reference Entity specified as such or of a type described in the applicable Final Terms.

**"Failure to Pay"** means after the expiration of any applicable Grace Period (after the satisfaction of any conditions precedent to the commencement of such Grace Period), the failure by a Reference Entity to make, when and where due, any payments in an aggregate amount of not less than the Payment Requirement under one or more Obligations in accordance with the terms of such Obligations at the time of such failure.

**"Final Price"** means the price of the Reference Obligation, expressed as a percentage, determined in accordance with the Valuation Method specified in the applicable Final Terms. The Calculation Agent shall as soon as practicable after obtaining all Quotations for a Valuation Date, make available for inspection by Holder at the specified office of the Principal Certificate Agent (in the case of Credit Linked Certificates) or Principal Paying Agent (in the case of Credit Linked Notes) (i) each such Quotation that it receives in connection with the calculation of the Final Price and (ii) a written computation showing its calculation of the Final Price.

**"Full Quotation"** means, in accordance with the Quotation Method each firm quotation obtained from a Quotation Dealer at the Valuation Time, to the extent reasonably practicable, for an amount of the Reference Obligation with an Outstanding Principal Balance equal to the Quotation Amount.

**"Fully Transferable Obligation"** means a Deliverable Obligation that is either Transferable, in the case of Bonds, or capable of being assigned or novated to all Eligible Transferees without the consent of any person being required in the case of any Deliverable Obligation other than Bonds. Any requirement that notification of novation, assignment or transfer of a Deliverable Obligation be provided to a trustee, fiscal agent, administrative agent, clearing agent or paying agent for a Deliverable Obligation shall not be considered as a requirement for consent for purposes of this definition of "Fully Transferable Obligation". For purposes of determining whether a Deliverable Obligation satisfies the requirements of this definition of "Fully Transferable Obligation", such determination shall be made as of the Delivery Date for the relevant Deliverable Obligation, taking into account only the terms of the Deliverable Obligation and any related transfer or consent documents which have been obtained by the Issuer or the Guarantor, as the case may be.

**"Governmental Authority"** means any *de facto* or *de jure* government (or any agency, instrumentality, ministry or department thereof), court, tribunal, administrative or other governmental authority or any other entity (private or public) charged with the regulation of the financial markets (including the central bank) of a Reference Entity or of the jurisdiction of organisation of a Reference Entity.

**"Grace Period"** means:

- (a) subject to paragraphs (b) and (c) below, the applicable grace period with respect to payments under the relevant Obligation under the terms of such Obligation in effect as of the later of the Trade Date and the date as of which such Obligation is issued or incurred;
- (b) if Grace Period Extension is specified as applying in the applicable Final Terms, a Potential Failure to Pay has occurred on or prior to the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes) and the applicable grace period cannot, by its terms, expire on or prior to the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes), the Grace Period shall be deemed to be the lesser of such grace period and the period specified as such in the applicable Final Terms or, if no period is specified in the applicable Final Terms, 30 calendar days; and

- (c) if, at the later of the Trade Date and the date as of which an Obligation is issued or incurred, no grace period with respect to payments or a grace period with respect to payments of less than three Grace Period Business Days is applicable under the terms of such Obligation, a Grace Period of three Grace Period Business Days shall be deemed to apply to such Obligation; provided that, unless Grace Period Extension is specified as applying in the applicable Final Terms, such deemed Grace Period shall expire no later than the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes).

**"Grace Period Business Day"** means a day on which commercial banks and foreign exchange markets are generally open to settle payments in the place or places and on the days specified for that purpose in the relevant Obligation and if a place or places are not so specified, in the jurisdiction of the Obligation Currency.

**"Grace Period Extension Date"** means, if:

- (a) Grace Period Extension is specified as applying in the applicable Final Terms; and
- (b) a Potential Failure to Pay occurs on or prior to the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes),

the day that is the number of days in the Grace Period after the date of such Potential Failure to Pay.

**"Hedge Disruption Event"** means in the opinion of the Calculation Agent any event as a result of which the Issuer and/or any of its Affiliates and/or its agents has not received the relevant Deliverable Obligations under the terms of any transaction and/or trading position entered into by the Issuer and/or such Affiliate and/or its agents to hedge directly or indirectly and whether in whole or in part the Issuer's obligations or position in respect of the Securities.

**"Hedge Disruption Obligation"** means a Deliverable Obligation included in the Entitlement which, on the Settlement Date for such Deliverable Obligation, the Calculation Agent determines cannot be Delivered as a result of a Hedge Disruption Event.

**"Market Value"** means, with respect to a Reference Obligation on a Valuation Date:

- (a) if more than three Full Quotations are obtained, the arithmetic mean of such Full Quotations, disregarding the Full Quotations having the highest and lowest values (and, if more than one such Full Quotations have the same highest value or lowest value, then one of such highest or lowest Full Quotations shall be disregarded);
- (b) if exactly three Full Quotations are obtained, the Full Quotation remaining after disregarding the highest and lowest Full Quotations (and, if more than one such Full Quotations have the same highest value or lowest value, then one of such highest or lowest Full Quotations shall be disregarded);
- (c) if exactly two Full Quotations are obtained, the arithmetic mean of such Full Quotations;
- (d) if fewer than two Full Quotations and a Weighted Average Quotation is obtained, such Weighted Average Quotation;
- (e) if fewer than two Full Quotations are obtained and no Weighted Average Quotation is obtained, subject as provided in the definition of Quotation, an amount as determined by the Calculation Agent on the next Business Day on which two or more Full Quotations or a Weighted Average Quotation is obtained; and
- (f) if two or more Full Quotations or a Weighted Average Quotation are not obtained on or prior to the tenth Business Day following the applicable Valuation Date, the Market Value shall be any Full Quotation obtained from a Quotation Dealer at the Valuation Time on such tenth Business Day, or if no Full Quotation is obtained, the weighted average of any firm quotations for the Reference Obligation obtained from Quotation Dealers at the Valuation Time on such tenth Business Day with respect to the aggregate portion of the Quotation

Amount for which such quotations were obtained and a quotation deemed to be zero for the balance of the Quotation Amount for which firm quotations were not obtained on such day.

**"Merger Event"** means that at any time during the period from (and including) the Trade Date to (but excluding) the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes) the Issuer, the Guarantor (if applicable) or a Reference Entity (any such entity, the "Mergor") consolidates or amalgamates with, or merges into, or transfers all or substantially all of its assets to (i) where the Mergor is the Issuer or the Guarantor, a Reference Entity or (ii) where the Mergor is a Reference Entity, the Issuer or the Guarantor, or, the Guarantor and a Reference Entity or the Issuer and a Reference Entity become Affiliates.

**"Minimum Quotation Amount"** means the amount specified as such in the applicable Final Terms (or its equivalent in the relevant Obligation Currency) or, if no amount is so specified, the lower of (a) US\$1,000,000 (or its equivalent in the relevant Obligation Currency) and (b) the Quotation Amount.

**"Modified Eligible Transferee"** means any bank, financial institution or other entity which is regularly engaged in and established for the purpose of making, purchasing or investing in loans, securities and other financial assets.

**"Modified Restructuring Maturity Limitation Date"** means, with respect to a Deliverable Obligation, the date that is the later of (x) the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes) and (y) 60 months following the Restructuring Date in the case of a Restructured Bond or Loan, or 30 months following the Restructuring Date in the case of all other Deliverable Obligations.

**"Notice Delivery Period"** means the period from and including the Trade Date to and including (a) the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes); (b) the Grace Period Extension Date if (i) "Grace Period Extension" is specified as applying in the applicable Final Terms, (ii) the Credit Event that is the subject of the Credit Event Notice is a Failure to Pay that occurs after the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes), and (iii) the Potential Failure to Pay with respect to such Failure to Pay occurs on or prior to the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes); (c) the Repudiation/Moratorium Evaluation Date if (i) the Credit Event that is the subject of the Credit Event Notice is a Repudiation/Moratorium that occurs after the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes), (ii) the Potential Repudiation/Moratorium with respect to such Repudiation/Moratorium occurs on or prior to the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes) and (iii) the Repudiation/Moratorium Extension Condition is satisfied; or (d) the Postponed Exercise Date (in the case of Credit Linked Certificates), if the Redemption Date is postponed pursuant to Credit Linked Condition 9 or the Postponement Date (in the case of Credit Linked Notes), if the Maturity Date is postponed pursuant to Credit Linked Condition 8.

**"Notice of Publicly Available Information"** means an irrevocable notice from the Calculation Agent (which may be by telephone) to the Issuer (which the Calculation Agent has the right but not the obligation to deliver) that cites Publicly Available Information confirming the occurrence of the Credit Event or Potential Repudiation/Moratorium, as applicable, described in the Credit Event Notice or Repudiation/Moratorium Extension Notice. In relation to a Repudiation/Moratorium Credit Event, the Notice of Publicly Available Information must cite Publicly Available Information confirming the occurrence of both clauses (a) and (b) of the definition of Repudiation/Moratorium. The notice given must contain a copy or description in reasonable detail, of the relevant Publicly Available Information. If Notice of Publicly Available Information is specified as applying in the applicable Final Terms and a Credit Event Notice or Repudiation/Moratorium Extension Notice, as applicable, contains Publicly Available Information, such Credit Event Notice or

Repudiation/Moratorium Extension Notice will also be deemed to be a Notice of Publicly Available Information;

**"Obligation"** means:

- (a) any obligation of a Reference Entity (either directly, as a provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the applicable Final Terms, as provider of any Qualifying Guarantee) determined pursuant to the method described in "Method for Determining Obligations" below (but excluding any Excluded Obligation);
- (b) each Reference Obligation specified in the applicable Final Terms, unless specified as an Excluded Obligation; and
- (c) any Additional Obligation of a Reference Entity specified as such in the applicable Final Terms;

**Method for Determining Obligations.** For the purposes of paragraph (a) of this definition of "Obligation", the term "Obligation" may be defined as each obligation of each Reference Entity described by the Obligation Category specified in the applicable Final Terms, and having each of the Obligation Characteristics (if any) specified in the applicable Final Terms, in each case, as of the date of the event which constitutes the Credit Event which is the subject of the Credit Event Notice. The following terms shall have the following meanings:

- (A) **"Obligation Category"** means Payment, Borrowed Money, Reference Obligations Only, Bond, Loan, or Bond or Loan, only one of which shall be specified in the applicable Final Terms, where:
  - (1) **"Payment"** means any obligation (whether present or future, contingent or otherwise) for the payment or repayment of money, including, without limitation, Borrowed Money;
  - (2) **"Borrowed Money"** means any obligation (excluding an obligation under a revolving credit arrangement for which there are no outstanding unpaid drawings in respect of principal) for the payment or repayment of borrowed money (which term shall include, without limitation, deposits and reimbursement obligations arising from drawings pursuant to letters of credit);
  - (3) **"Reference Obligations Only"** means any obligation that is a Reference Obligation and no Obligation Characteristics shall be applicable to Reference Obligations Only;
  - (4) **"Bond"** means any obligation of a type included in the "Borrowed Money" Obligation Category that is in the form of, or represented by, a bond, note (other than notes delivered pursuant to Loans), certificated debt security or other debt security and shall not include any other type of Borrowed Money;
  - (5) **"Loan"** means any obligation of a type included in the "Borrowed Money" Obligation Category that is documented by a term loan agreement, revolving loan agreement or other similar credit agreement and shall not include any other type of Borrowed Money; and
  - (6) **"Bond or Loan"** means any obligation that is either a Bond or a Loan;
- (B) **"Obligation Characteristics"** means any one or more of Not Subordinated, Specified Currency, Not Sovereign Lender, Not Domestic Currency, Not Domestic Law, Listed and Not Domestic Issuance specified in the applicable Final Terms, where:
  - (1) (a) **"Not Subordinated"** means an obligation that is not Subordinated to the most senior Reference Obligation in priority of payment or, if no Reference Obligation is specified in the applicable Final Terms, any unsubordinated Borrowed Money obligation of the Reference Entity. For purposes of determining whether an obligation satisfies the "Not Subordinated" Obligation Characteristic or Deliverable Obligation Characteristic, the ranking in priority of payment of each Reference Obligation shall be determined as of the later of (1) the Trade Date specified in the applicable

Final Terms and (2) the date on which such Reference Obligation was issued or incurred and shall not reflect any change to such ranking in priority of payment after such later date;

- (b) **"Subordination"** means, with respect to an obligation (the **"Subordinated Obligation"**) and another obligation of the Reference Entity to which such obligation is being compared (the **"Senior Obligation"**), a contractual, trust or other similar arrangement providing that (i) upon the liquidation, dissolution, reorganisation or winding up of the Reference Entity, claims of the holders of the Senior Obligation will be satisfied prior to the claims of the holders of the Subordinated Obligation or (ii) the holders of the Subordinated Obligation will not be entitled to receive or retain payments in respect of their claims against the Reference Entity at any time that the Reference Entity is in payment arrears or is otherwise in default under the Senior Obligation. "Subordinated" will be construed accordingly. For purposes of determining whether Subordination exists or whether an obligation is Subordinated with respect to another obligation to which it is being compared, the existence of preferred creditors arising by operation of law or of collateral, credit support or other credit enhancement arrangements shall not be taken into account, except that, notwithstanding the foregoing, priorities arising by operation of law shall be taken into account where the Reference Entity is a Sovereign;
- (c) **"Credit Linked Specified Currency"** means an obligation that is payable in the currency or currencies specified as such in the applicable Final Terms (or, if Credit Linked Specified Currency is specified in the applicable Final Terms and no currency is so specified, any of the lawful currencies of Canada, Japan, Switzerland, the United Kingdom and the United States of America and the euro and any successor currency to any of the aforementioned currencies, which currencies shall be referred to collectively in the applicable Final Terms as the **"Standard Specified Currencies"**).
- (2) **"Not Sovereign Lender"** means any obligation that is not primarily owed to a Sovereign or Supranational Organisation, including, without limitation, obligations generally referred to as **"Paris Club debt"**.
- (3) **"Not Domestic Currency"** means any obligation that is payable in any currency other than the Domestic Currency.
- (4) **"Not Domestic Law"** means any obligation that is not governed by the laws of (a) the relevant Reference Entity, if such Reference Entity is a Sovereign, or (b) the jurisdiction of organisation of the relevant Reference Entity, if such Reference Entity is not a Sovereign.
- (5) **"Listed"** means an obligation that is quoted, listed or ordinarily purchased and sold on an exchange.
- (6) **"Not Domestic Issuance"** means any obligation other than an obligation that was, at the time the relevant obligation was issued (or reissued, as the case may be) or incurred, intended to be offered for sale primarily in the domestic market of the relevant Reference Entity. Any obligation that is registered or qualified for sale outside the domestic market of the relevant Reference Entity (regardless of whether such obligation is also registered or qualified for sale within the domestic market of the relevant Reference Entity) shall be deemed not to be intended for sale primarily in the domestic market of the Reference Entity.

**"Obligation Acceleration"** means one or more Obligations in an aggregate amount of not less than the Default Requirement have become due and payable before they would otherwise have been due and payable as a result of, or on the basis of, the occurrence of a default, event of default or other similar condition or event (however described), other than a failure to make any required payment, in respect of a Reference Entity under one or more Obligations.

**"Obligation Currency"** means the currency or currencies in which the Obligation is denominated.

**"Obligation Default"** means one or more Obligations in an aggregate amount of not less than the Default Requirement have become capable of being declared due and payable before they would otherwise have been due and payable as a result of, or on the basis of, the occurrence of a default, event of default, or other similar condition or event (however described), other than a failure to make any required payment, in respect of a Reference Entity under one or more Obligations.

**"Outstanding Principal Balance"** means, subject as provided in sub-paragraph (4)(d) of paragraph (B) (Interpretation of Provisions) in the definition of Deliverable Obligation:

- (a) with respect to any Accreting Obligation, the Accreted Amount thereof; and
- (b) with respect to any other obligation, the outstanding principal balance of such obligation,

Provided That with respect to any Exchangeable Obligation that is not an Accreting Obligation, **"Outstanding Principal Balance"** shall exclude any amount that may be payable under the terms of such obligation in respect of the value of the Equity Securities for which such obligation is exchangeable.

**"Payment Requirement"** means the amount specified as such in the applicable Final Terms or its equivalent in the relevant Obligation Currency or, if a Payment Requirement is not specified in the applicable Final Terms, US\$1,000,000, or its equivalent as calculated by the Calculation Agent in the relevant Obligation Currency, in either case, as of the occurrence of the relevant Failure to Pay or Potential Failure to Pay, as applicable.

**"Permitted Currency"** means (i) the legal tender of any Group of 7 country (or any country that becomes a member of the Group of 7 if such Group of 7 expands its membership), or (ii) the legal tender of any country which, as of the date of such change, is a member of the Organisation for Economic Co-operation and Development and has a local currency long term debt rating of either AAA or higher assigned to it by Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. or any successor to the rating business thereof, Aaa or higher assigned to it by Moody's Investors Service's Limited, or any successor to the rating business thereof or AAA or higher assigned to it by Fitch Ratings Ltd or any successor to the rating business thereof.

**"Physical Settlement Period"** means the number of Business Days specified as such in the applicable Final Terms or, if a number of Business Days is not so specified, then, with respect to a Deliverable Obligation comprising the Entitlement, the longest number of Business Days for settlement in accordance with then current market practice of such Deliverable Obligation, as determined by the Calculation Agent.

**"Potential Failure to Pay"** means the failure by a Reference Entity to make, when and where due, any payments in an aggregate amount of not less than the Payment Requirement under one or more Obligations, without regard to any grace period or any conditions precedent to the commencement of any grace period applicable to such Obligations, in accordance with the terms of such Obligations at the time of such failure.

**"Potential Repudiation/Moratorium"** means the occurrence of an event described in paragraph (a) of the definition of Repudiation/Moratorium.

**"Publicly Available Information"** means:

- (a) information that reasonably confirms any of the facts relevant to the determination that the Credit Event or a Potential Repudiation/Moratorium, as applicable, described in a Credit Event Notice or Repudiation/Moratorium Extension Notice has occurred and which:
  - (i) has been published in or on not less than the Specified Number of Public Sources, regardless of whether the reader or user thereof pays a fee to obtain such information provided that, if either the Calculation Agent or the Issuer, the Guarantor (if applicable) or any of their respective Affiliates and/or agents is cited as the sole source of such information, then such information shall not be deemed to be

Publicly Available Information unless either the Calculation Agent or the Issuer, the Guarantor (if applicable) or any of their Affiliates and/or agents is acting in its capacity as trustee, fiscal agent, administrative agent, clearing agent or paying agent for an Obligation; or

- (ii) is information received from or published by (A) a Reference Entity or, as the case may be, a Sovereign Agency in respect of a Reference Entity which is a Sovereign or (B) a trustee, fiscal agent, administrative agent, clearing agent or paying agent for an Obligation; or
  - (iii) is information contained in any petition or filing instituting a proceeding described in paragraph (d) of the definition of Bankruptcy against or by a Reference Entity; or
  - (iv) is information contained in any order, decree, notice or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body;
- (b) in the event that the Calculation Agent is (i) the sole source of information in its capacity as trustee, fiscal agent, administrative agent, clearing agent or paying agent for an Obligation and (ii) a holder of the Obligation with respect to which a Credit Event has occurred, the Calculation Agent shall be required to deliver to the Issuer a certificate signed by a Managing Director (or other substantially equivalent title) of the Calculation Agent, which shall certify the occurrence of a Credit Event with respect to a Reference Entity;
- (c) in relation to any information of the type described in paragraphs (a)(ii), (iii) and (iv) above, the Calculation Agent may assume that such information has been disclosed to it without violating any law, agreement or understanding regarding the confidentiality of such information and that the entity disclosing such information has not taken any action or entered into any agreement or understanding with the Reference Entity or any Affiliate of the Reference Entity that would be breached by, or would prevent, the disclosure of such information to third parties;
- (d) Publicly Available Information need not state:
- (i) in relation to the definition of "Downstream Affiliate", the percentage of Voting Shares owned, directly or indirectly, by the Reference Entity; and
  - (ii) that such occurrence:
    - (A) has met the Payment Requirement or Default Requirement;
    - (B) is the result of exceeding any applicable Grace Period; or
    - (C) has met the subjective criteria specified in certain Credit Events;

**"Public Source"** means each source of Publicly Available Information specified as such in the applicable Final Terms (or if a source is not specified in the applicable Final Terms, each of Bloomberg Service, Dow Jones Telerate Service, Reuter Monitor Money Rates Services, Dow Jones News Wire, Wall Street Journal, New York Times, Nihon Keizai Shinbun, Asahi Shinbun, Yomiuri Shinbun, Financial Times, La Tribune, Les Echos and The Australian Financial Review (and successor publications), the main source(s) of business news in the country in which the Reference Entity is organised and any other internationally recognised published or electronically displayed news sources).

**"Qualifying Affiliate Guarantee"** means a Qualifying Guarantee provided by a Reference Entity in respect of an Underlying Obligation of a Downstream Affiliate of that Reference Entity.

**"Qualifying Guarantee"** means an arrangement evidenced by a written instrument pursuant to which a Reference Entity irrevocably agrees (by guarantee of payment or equivalent legal arrangement) to pay all amounts due under an obligation (the **"Underlying Obligation"**) for which another party is the obligor (the **"Underlying Obligor"**) and that is not at the time of the Credit Event Subordinated to any unsubordinated Borrowed Money obligation of the Underlying Obligor

(with references in the definition of Subordination to the Reference Entity deemed to refer to the Underlying Obligor). Qualifying Guarantees shall exclude any arrangement structured (i) as a surety bond, financial guarantee insurance policy, letter of credit or equivalent legal arrangement or (ii) pursuant to the terms of which the payment obligations of the Reference Entity can be discharged, reduced, assigned or otherwise altered as a result of the occurrence or non-occurrence of an event or circumstance (other than payment). The benefit of a Qualifying Guarantee must be capable of being Delivered together with the Delivery of the Underlying Obligation.

**"Qualifying Participation Seller"** means any participation seller that meets the requirements specified in the applicable Final Terms. If no such requirements are specified, there shall be no Qualifying Participation Seller.

**"Quotation"** means each Full Quotation and the Weighted Average Quotation obtained and expressed as a percentage with respect to a Valuation Date in the manner that follows:

- (a) The Calculation Agent shall attempt to obtain Full Quotations with respect to each Valuation Date from five or more Quotation Dealers. If the Calculation Agent is unable to obtain two or more such Full Quotations on the same Business Day within three Business Days of a Valuation Date, then on the next following Business Day (and, if necessary, on each Business Day thereafter until the tenth Business Day following the relevant Valuation Date) the Calculation Agent shall attempt to obtain Full Quotations from five or more Quotation Dealers and, if two or more Full Quotations are not available, a Weighted Average Quotation. If the Calculation Agent is unable to obtain two or more Full Quotations or a Weighted Average Quotation on the same Business Day on or prior to the tenth Business Day following the applicable Valuation Date, the Quotations shall be deemed to be any Full Quotation obtained from a Quotation Dealer at the Valuation Time on such tenth Business Day. If no Full Quotation is obtained, the weighted average of any firm quotations for the Reference Obligation obtained from Quotation Dealers at the Valuation Time on such tenth Business Day with respect to the aggregate portion of the Quotation Amount for which such quotations were obtained and a quotation deemed to be zero for the balance of the Quotation Amount for which firm quotations were not obtained on such day.
- (b)
  - (i) If "Include Accrued Interest" is specified in the applicable Final Terms in respect of Quotations, such Quotations shall include accrued but unpaid interest.
  - (ii) If "Exclude Accrued Interest" is specified in the applicable Final Terms in respect of Quotations, such Quotations shall not include accrued but unpaid interest.
  - (iii) If neither "Include Accrued Interest" nor "Exclude Accrued Interest" is specified in the applicable Final Terms in respect of Quotations, the Calculation Agent shall determine, based on the then current market practice in the market of the Reference Obligation, whether such Quotations shall include or exclude accrued but unpaid interest. All Quotations shall be obtained in accordance with this specification or determination.
- (c) If any Quotation obtained with respect to an Accreting Obligation is expressed as a percentage of the amount payable in respect of such obligation at maturity, such Quotation will instead be expressed as a percentage of the Outstanding Principal Balance for the purposes of determining the Final Price.

**"Quotation Amount"** means the amount specified as such in the applicable Final Terms (which may be specified by reference to an amount in a currency or by reference to a Representative Amount) or, if no amount is specified in the applicable Final Terms, the Aggregate Nominal Amount (in the case of Credit Linked Notes) or the Aggregate Notional Amount (in the case of Certificates) (or, in either case, its equivalent in the relevant Obligation Currency converted by the Calculation Agent in a commercially reasonable manner by reference to exchange rates in effect at the time that the relevant Quotation is being obtained);



**"Quotation Dealer"** means a dealer in obligations of the type of Obligation(s) for which Quotations are to be obtained including each Quotation Dealer specified in the applicable Final Terms. If no Quotation Dealers are specified in the applicable Final Terms, the Calculation Agent shall select the Quotation Dealers in its sole and absolute discretion. Upon a Quotation Dealer no longer being in existence (with no successors), or not being an active dealer in the obligations of the type for which Quotations are to be obtained, the Calculation Agent may substitute any other Quotation Dealer(s) for such Quotation Dealer(s);

**"Quotation Method"** means the applicable Quotation Method specified in the applicable Final Terms by reference to one of the following terms:

**"Bid"** means that only bid quotations shall be requested from Quotation Dealers;

**"Offer"** means that only offer quotations shall be requested from Quotation Dealers; or

**"Mid-market"** means that bid and offer quotations shall be requested from Quotation Dealers and shall be averaged for the purposes of determining a relevant Quotation Dealer's quotation.

If a Quotation Method is not specified in the applicable Final Terms, Bid shall apply.

**"Reference Entity"** means the entity or entities specified as such in the applicable Final Terms. Any Successor to a Reference Entity identified pursuant to the definition of "Successor" in Credit Linked Condition 2 shall be the Reference Entity for the purposes of the relevant Series.

**"Reference Obligation"** means each obligation specified or of a type described as such in the applicable Final Terms (if any are so specified or described) and any Substitute Reference Obligation.

**"Relevant Obligations"** means the Obligations constituting Bonds and Loans of the Reference Entity outstanding immediately prior to the effective date of the Succession Event, excluding any debt obligations outstanding between the Reference Entity and any of its Affiliates and/or its agents, as determined by the Calculation Agent. The Calculation Agent will determine the entity which succeeds to such Relevant Obligations on the basis of the Best Available Information. If the date on which the Best Available Information becomes available (or is filed) precedes the legally effective date of the relevant Succession Event, any assumptions as to the allocation of obligations between or among entities contained in the Best Available Information will be deemed to have been fulfilled as of the legally effective date of the Succession Event, whether or not this is in fact the case.

**"Representative Amount"** means an amount that is representative for a single transaction in the relevant market and at the relevant time, such amount to be determined by the Calculation Agent.

**"Repudiation/Moratorium"** means the occurrence of both of the following events:

- (a) an authorised officer of a Reference Entity or a Governmental Authority:
  - (x) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, one or more Obligations in an aggregate amount of not less than the Default Requirement; or
  - (y) declares or imposes a moratorium, standstill, roll-over or deferral, whether *de facto* or *de jure*, with respect to one or more Obligations in an aggregate amount of not less than the Default Requirement; and
- (b) a Failure to Pay, determined without regard to the Payment Requirement, or a Restructuring, determined without regard to the Default Requirement, with respect to any such Obligation occurs on or prior to the Repudiation/Moratorium Evaluation Notice Date.

**"Repudiation/Moratorium Evaluation Date"** means, if a Potential Repudiation/Moratorium occurs on or prior to the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Notice Maturity Date (in the case of Credit Linked Notes), (i) if the Obligations to which such Potential Repudiation/Moratorium relates include Bonds, the date that is the later of (A) the date that is 60 days after the date of such Potential Repudiation/Moratorium and (B) the first payment date

under any such Bond after the date of such Potential Repudiation/Moratorium (or, if later, the expiration date of any applicable Grace Period in respect of such payment date) and (ii) if the Obligations to which such Potential Repudiation/Moratorium relates do not include Bonds, the date that is 60 days after the date of such Potential Repudiation/Moratorium;

**"Repudiation/Moratorium Extension Condition"** means the delivery of a Repudiation/Moratorium Extension Notice and, if specified as applicable in the applicable Final Terms, Notice of Publicly Available Information by the Calculation Agent to the Issuer that is effective during the period from and including the Trade Date to and including:

- (a) in the case of Credit Linked Notes:  
the Scheduled Maturity Notice Date or, if Credit Linked Condition 8(y) applies, the Postponement Date; or
- (b) in the case of Credit Linked Certificates:  
the Scheduled Exercise Date or, if Credit Linked Condition 9(y) applies, the Postponed Exercise Date;

**"Repudiation/Moratorium Extension Notice"** means an irrevocable notice (which may be by telephone) from the Calculation Agent to the Issuer (which the Calculation Agent has the right but not the obligation to deliver) that describes a Potential Repudiation/Moratorium that occurred on or after the Trade Date and on or prior to the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes). A Repudiation/Moratorium Extension Notice must contain a description in reasonable detail of the facts relevant to the determination that a Potential Repudiation/Moratorium has occurred and indicate the date of the occurrence. The Potential Repudiation/Moratorium that is the subject of the Repudiation/Moratorium Extension Notice need not be continuing on the date the Repudiation/Moratorium Extension Notice is effective.

**"Restructured Bond or Loan"** means an Obligation which is a Bond or Loan and in respect of which the Restructuring that is the subject of a Credit Event Notice has occurred.

**"Restructuring"** means, with respect to one or more Obligations and in relation to an aggregate amount of not less than the Default Requirement, any one or more of the following events occurs in a form that binds all holders of such Obligation, is agreed between a Reference Entity or a Governmental Authority and a sufficient number of holders of the Obligation to bind all the holders of such Obligation or is announced (or otherwise decreed) by a Reference Entity or a Governmental Authority in a form that binds all holders of such Obligation, and such event is not expressly provided for under the terms of such Obligation in effect as of the later of the Trade Date and the date as of which such Obligation is issued or incurred:

- (i) a reduction in the rate or amount of interest payable or the amount of scheduled interest accruals;
- (ii) a reduction in the amount of principal or premium payable at maturity or at scheduled redemption dates;
- (iii) a postponement or other deferral of a date or dates for either (i) the payment or accrual of interest or (ii) the payment of principal or premium;
- (iv) a change in the ranking in priority of payment of any Obligation, causing the Subordination of such Obligation to any other Obligation; or
- (v) any change in the currency or composition of any payment of interest or principal to any currency which is not a Permitted Currency;

Notwithstanding the above provisions, none of the following shall constitute a Restructuring:

- (a) the payment in euro of interest or principal in relation to an Obligation denominated in a currency of a Member State of the European Union that adopts or has adopted the single

currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union;

- (b) the occurrence of, agreement to or announcement of any of the events described in (i) to (v) above due to an administrative adjustment, accounting adjustment or tax adjustment or other technical adjustment occurring in the ordinary course of business; and
- (c) the occurrence of, agreement to or announcement of any of the events described in (i) to (v) above in circumstances where such event does not directly or indirectly result from a deterioration in the creditworthiness or financial condition of the Reference Entity.

For the purposes of the definition of Restructuring and Credit Linked Condition 13, the term Obligation shall be deemed to include Underlying Obligations for which the Reference Entity is acting as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the applicable Final Terms, as provider of any Qualifying Guarantee. In the case of a Qualifying Guarantee and an Underlying Obligation, references to the Reference Entity in the initial paragraph and sub-paragraphs (i) to (v) above of the definition of Restructuring shall be deemed to refer to the Underlying Obligor and the reference to the Reference Entity in the second paragraph of this definition of Restructuring shall continue to refer to the Reference Entity.

**"Restructuring Date"** means, with respect to a Restructured Bond or Loan, the date on which a Restructuring is legally effective in accordance with the terms of the documentation governing such Restructuring.

**"Restructuring Maturity Limitation Date"** means the date that is the earlier of (i) thirty months following the Restructuring Date and (ii) the latest final maturity date of any Restructured Bond or Loan, provided, however, that under no circumstances shall the Restructuring Maturity Limitation Date be earlier than the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Notice Maturity Date (in the case of Credit Linked Notes) or later than thirty months following the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes) and if it is, it shall be deemed to be the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes) or thirty months following the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes), as the case may be.

**"Scheduled Maturity Notice Date"** means the day falling two Business Days immediately preceding the Scheduled Maturity Date.

**"Settlement Currency"** means the currency specified as such in the applicable Final Terms, or if no currency is specified in the applicable Final Terms, the Settlement Currency of the Certificates (in the case of Credit Linked Certificates) or Specified Currency of the Notes (in the case of Credit Linked Notes).

**"Sovereign"** means any state, political subdivision or government, or any agency, instrumentality, ministry, department or other authority (including without limiting the foregoing, the central bank) thereof.

**"Sovereign Agency"** means any agency, instrumentality, ministry, department or other authority (including, without limiting the foregoing, the central bank) of a Sovereign.

**"Sovereign Restructured Deliverable Obligation"** means an Obligation of a Sovereign Reference Entity (a) in respect of which a Restructuring that is the subject of the relevant Credit Event Notice has occurred and (b) described by the Deliverable Obligation Category specified in the applicable Final Terms, and, subject to sub-paragraph (3) of paragraph "(B) Interpretation of Provisions" in the definition of "Deliverable Obligation", having each of the Deliverable Obligation Characteristics, if any, specified in the applicable Final Terms, in each case, immediately preceding the date on which such Restructuring is legally effective in accordance with the terms of the documentation governing such Restructuring without regard to whether the Obligation would satisfy such Deliverable Obligation Category or Deliverable Obligation Characteristics after such Restructuring.

**"Specified Number"** means the number of Public Source(s) specified in the applicable Final Terms, or if no number is specified in the applicable Final Terms, two.

**"Substitute Reference Obligation"** means one or more obligations of the Reference Entity (either directly or as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the applicable Final Terms, as provider of any Qualifying Guarantee) that will replace one or more Reference Obligations, identified by the Calculation Agent in accordance with the following procedures:

- (a) In the event that:
  - (i) a Reference Obligation is redeemed in whole; or
  - (ii) in the opinion of the Calculation Agent (A) the aggregate amounts due under any Reference Obligation have been materially reduced by redemption or otherwise (other than due to any scheduled redemption, amortisation or prepayments), (B) any Reference Obligation is an Underlying Obligation with a Qualifying Guarantee of a Reference Entity and, other than due to the existence or occurrence of a Credit Event, the Qualifying Guarantee is no longer a valid and binding obligation of such Reference Entity enforceable in accordance with its terms or (C) for any other reason, other than due to the existence or occurrence of a Credit Event, any Reference Obligation is no longer an obligation of a Reference Entity, the Calculation Agent shall identify one or more Obligations to replace such Reference Obligation.
- (b) Any Substitute Reference Obligation or Substitute Reference Obligations shall be an Obligation that (1) ranks *pari passu* (or, if no such Obligation exists, then, at the Issuer's option, an Obligation that ranks senior) in priority of payment with such Reference Obligation (with the ranking in priority of payment of such Reference Obligation being determined as of the later of (A) the Trade Date and (B) the date on which such Reference Obligation was issued or incurred and not reflecting any change to such ranking in priority of payment after such later date), (2) preserves the economic equivalent, as closely as practicable as determined by the Calculation Agent of the delivery and payment obligations of the Issuer and (3) is an obligation of a Reference Entity (either directly or as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the applicable Final Terms, as provider of any Qualifying Guarantee). The Substitute Reference Obligation or Substitute Reference Obligations identified by the Calculation Agent shall, without further action, replace such Reference Obligation or Reference Obligations.
- (c) If more than one specific Reference Obligation is identified as a Reference Obligation in relation to a Series, any of the events set forth in paragraph (a) above has occurred with respect to one or more but not all of the Reference Obligations, and the Calculation Agent determines that no Substitute Reference Obligation is available for one or more of such Reference Obligations, each Reference Obligation for which no Substitute Reference Obligation is available shall cease to be a Reference Obligation.
- (d) If more than one specific Reference Obligation is identified as a Reference Obligation in relation to a Series, any of the events set forth in paragraph (a) above has occurred with respect to all of the Reference Obligations, and the Calculation Agent determines that at least one Substitute Reference Obligation is available for any such Reference Obligation, then each such Reference Obligation shall be replaced by a Substitute Reference Obligation and each Reference Obligation for which no Substitute Reference Obligation is available will cease to be a Reference Obligation.
- (e) If:
  - (i) more than one specific Reference Obligation is identified as a Reference Obligation in relation to a Series, any of the events set forth in paragraph (a) above has occurred with respect to all of the Reference Obligations and the Calculation Agent

determines that no Substitute Reference Obligation is available for any of the Reference Obligations; or

- (ii) only one specific Reference Obligation is identified as a Reference Obligation in relation to a Series, any of the events set forth in paragraph (a) above has occurred with respect to such Reference Obligation and the Calculation Agent determines that no Substitute Reference Obligation is available for that Reference Obligation,

then the Calculation Agent shall continue to attempt to identify a Substitute Reference Obligation until the later of (A) the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes), (B) the Grace Period Extension Date (if any) and (C) the Repudiation/Moratorium Evaluation Date (if any). If (i) either Cash Settlement is specified in the applicable Final Terms and the Credit Event Redemption Amount is determined by reference to a Reference Obligation or Physical Delivery is specified in the applicable Final Terms and the Reference Obligation is the only Deliverable Obligation and (ii) on or prior to the later of (A) the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes), (B) the Grace Period Extension Date or (C) the Repudiation/Moratorium Evaluation Date, a Substitute Reference Obligation has not been identified, the Issuer's obligations under the Securities shall cease as of the later of (A) the Scheduled Exercise Date (in the case of Credit Linked Certificates) or Scheduled Maturity Notice Date (in the case of Credit Linked Notes), (B) the Grace Period Extension Date or (C) the Repudiation/Moratorium Evaluation Date.

- (f) For the purposes of identification of a Reference Obligation, any change in the Reference Obligation's CUSIP or ISIN number or other similar identifier will not, in and of itself, convert such Reference Obligation into a different Obligation.

**"Succession Event"** means an event such as a merger, de-merger, consolidation, amalgamation, transfer of assets or liabilities, spin-off or other similar event in which one entity succeeds to the obligations of another entity, whether by operation of law or pursuant to any agreement. Notwithstanding the foregoing, "Succession Event" shall not include an event in which the holders of obligations of the Reference Entity exchange such obligations for the obligations of another entity, unless such exchange occurs in connection with a merger, demerger, consolidation, amalgamation, transfer of assets or liabilities, spin-off or other similar event.

**"Successor"** means:

- (a) in relation to a Reference Entity that is not a Sovereign, the entity or entities, if any, determined as set forth below:
  - (i) if one entity directly or indirectly succeeds to seventy-five per cent. or more of the Relevant Obligations of the Reference Entity by way of a Succession Event, that entity will be the sole Successor;
  - (ii) if only one entity directly or indirectly succeeds to more than twenty-five per cent. (but less than seventy-five per cent.) of the Relevant Obligations of the Reference Entity by way of a Succession Event, and not more than twenty-five per cent. of the Relevant Obligations of the Reference Entity remain with the Reference Entity, the entity that succeeds to more than twenty-five per cent. of the Relevant Obligations will be the sole Successor;
  - (iii) if more than one entity each directly or indirectly succeed to more than twenty-five per cent. of the Relevant Obligations of the Reference Entity by way of a Succession Event, and not more than twenty-five per cent. of the Relevant Obligations of the Reference Entity remain with the Reference Entity, the entities that succeed to more than twenty-five per cent. of the Relevant Obligations will each be a Successor and these Terms and Conditions and/or the applicable Final Terms will be adjusted as provided below;

- (iv) if one or more entity each directly or indirectly succeed to more than twenty-five per cent. of the Relevant Obligations of the Reference Entity by way of a Succession Event, and more than twenty-five per cent. of the Relevant Obligations of the Reference Entity remain with the Reference Entity, each such entity and the Reference Entity will each be a Successor and these Terms and Conditions and/or the applicable Final Terms will be adjusted as provided below;
  - (v) if one or more entities directly or indirectly succeed to a portion of the Relevant Obligations of the Reference Entity by way of a Succession Event, but no entity succeeds to more than twenty-five per cent. of the Relevant Obligations of the Reference Entity and the Reference Entity continues to exist, there will be no Successor and the Reference Entity will not be changed in any way as a result of the Succession Event; and
  - (vi) if one or more entities directly or indirectly succeed to a portion of the Relevant Obligations of the Reference Entity by way of a Succession Event, but no entity succeeds to more than twenty-five per cent. of the Relevant Obligations of the Reference Entity and the Reference Entity ceases to exist, the entity which succeeds to the greatest percentage of Relevant Obligations (or, if two or more entities succeed to an equal percentage of Relevant Obligations, the entity from among those entities which succeeds to the greatest percentage of obligations of the Reference Entity) will be the sole Successor; and
- (b) in relation to a Sovereign Reference Entity, any direct or indirect successor(s) to that Reference Entity irrespective of whether such successor(s) assume(s) any of the obligations of such Reference Entity.

In the case of (a) above, the Calculation Agent will be responsible for determining, as soon as reasonably practicable after it becomes aware of the relevant Succession Event (but no earlier than fourteen calendar days after the legally effective date of the Succession Event), and with effect from the legally effective date of the Succession Event, whether the relevant thresholds set forth above have been met, or which entity qualifies under (a)(vi) above, as applicable. In calculating the percentages used to determine whether the relevant thresholds set forth above have been met, or which entity qualifies under (a)(vi) above, as applicable, the Calculation Agent shall use, in respect of each applicable Relevant Obligation included in such calculation, the amount of the liability in respect of such Relevant Obligation listed in the Best Available Information and shall, as soon as practicable after such calculation, make such calculation available for inspection by Holders at the specified office of the Principal Security Agent.

Where pursuant to paragraph (a)(iii) or (a)(iv) above, more than one Successor has been identified, the Calculation Agent shall adjust such of the Terms and Conditions and/or the applicable Final Terms as it in its sole and absolute discretion acting in a commercially reasonable manner shall determine to be appropriate to reflect that the relevant Reference Entity has been succeeded by more than one Successor and shall determine the effective date of that adjustment. The Calculation Agent shall be deemed to be acting in a commercially reasonable manner if it adjusts such of the Terms and Conditions and/or the applicable Final Terms in such a manner as to reflect the adjustment to and/or division of any credit derivative transaction(s) related to or underlying the Credit Linked Securities under the provisions of the 2003 ISDA Credit Derivatives Definitions.

Upon the Calculation Agent making such adjustment and notifying the Issuer of such adjustment, the Issuer shall give notice as soon as practicable to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, stating the adjustment to the Terms and Conditions and/or the applicable Final Terms and giving brief details of the relevant Succession Event.

For the purposes of this definition of "Successor", "succeed" means, with respect to a Reference Entity and its Relevant Obligations (or, as applicable, obligations), that a party other than such Reference Entity (i) assumes or becomes liable for such Relevant Obligations (or, as applicable, obligations) whether by operation of law or pursuant to any agreement or (ii) issues Bonds that are

exchanged for Relevant Obligations (or, as applicable, obligations), and in either case such Reference Entity is no longer an obligor (primarily or secondarily) or guarantor with respect to such Relevant Obligations (or, as applicable, obligations). The determinations required pursuant to paragraph (a) of this definition of "Successor" shall be made, in the case of an exchange offer, on the basis of the Outstanding Principal Balance of Relevant Obligations tendered and accepted in the exchange and not on the basis of the Outstanding Principal Balance of Bonds for which Relevant Obligations have been exchanged.

Where:

- (A) a Reference Obligation is specified in the applicable Final Terms; and
- (B) one or more Successors to the Reference Entity have been identified; and
- (C) any one or more such Successors have not assumed the Reference Obligation,

a Substitute Reference Obligation will be determined in accordance with the definition of "Substitute Reference Obligation" above.

**"Supranational Organisation"** means any entity or organisation established by treaty or other arrangement between two or more Sovereigns or the Sovereign Agencies of two or more Sovereigns, and includes, without limiting the foregoing, the International Monetary Fund, European Central Bank, International Bank for Reconstruction and Development and the European Bank for Reconstruction and Development.

**"Trade Date"** means the date specified as such in the applicable Final Terms.

**"Undeliverable Obligation"** means a Deliverable Obligation included in the Entitlement which, on the Settlement Date for such Deliverable Obligation, the Calculation Agent determines for any reason (including without limitation, failure of the relevant clearance system or due to any law, regulation, court order, contractual restrictions, statutory restrictions or market conditions or the non-receipt of any requisite consents with respect to the Delivery of Loans) it is impossible or illegal to Deliver on the Settlement Date.

**"Unwind Costs"** means the amount specified in the applicable Final Terms or if "Standard Unwind Costs" are specified in the applicable Final Terms, an amount determined by the Calculation Agent equal to the sum of (without duplication) all costs, expenses (including, without limitation, loss of funding and break funding charges and fees), tax and duties incurred by the Issuer and/or any of its Affiliates and/or agents in connection with the redemption or cancellation, as applicable, of the Securities and the related termination, settlement or re-establishment of any hedge or related trading position, such amount to be apportioned *pro rata* amongst (x) each nominal amount of Notes equal to the Calculation Amount set out in the applicable Final Terms (in the case of Credit Linked Notes) or (y) each Certificate (in the case of Credit Linked Certificates).

**"Valuation Date"** means (a) where Physical Delivery is specified as applying in the applicable Final Terms, the day falling three Business Days after the Final Delivery Date, or (b) where Cash Settlement is specified as applying in the applicable Final Terms, if "Single Valuation Date" is specified in the applicable Final Terms, the date that is the number of Business Days specified in the Final Terms after the Credit Event Determination Date or, if the number of Business Days is not so specified, five Business Days after the Credit Event Determination Date, and if "Multiple Valuation Dates" is specified in the applicable Final Terms, each of the following dates:

- (i) the date that is the number of Business Days specified in the applicable Final Terms after the Credit Event Determination Date (or, if the number of Business Days is not specified, five Business Days); and
- (ii) each successive date that is the number of Business Days specified in the applicable Final Terms (or if the number of Business Days is not so specified, five Business Days) after the date on which the Calculation Agent obtains a Market Value with respect to the immediately preceding Valuation Date.

When "Multiple Valuation Dates" is specified in the applicable Final Terms, the total number of Valuation Dates shall be equal to the number of Valuation Dates specified in the applicable Final Terms (or, if the number of Valuation Dates is not so specified, five Valuation Dates).

If neither Single Valuation Date nor Multiple Valuation Dates is specified in the applicable Final Terms, Single Valuation Date shall apply.

**"Valuation Method":**

- (i) The following Valuation Methods may be specified in the applicable Final Terms for a Series with only one Reference Obligation and only one Valuation Date:

**"Market"** means the Market Value determined by the Calculation Agent with respect to the Valuation Date; or

**"Highest"** means the highest Quotation obtained by the Calculation Agent with respect to the Valuation Date.

- (ii) If no such Valuation Method is specified in the applicable Final Terms, the Valuation Method shall be Highest.

- (iii) The following Valuation Methods may be specified in the applicable Final Terms for a Series with only one Reference Obligation and more than one Valuation Date:

**"Average Market"** means the unweighted arithmetic mean of the Market Values determined by the Calculation Agent with respect to each Valuation Date; or

**"Highest"** means the highest Quotation obtained by the Calculation Agent with respect to any Valuation Date; or

**"Average Highest"** means the unweighted arithmetic mean of the highest Quotations obtained by the Calculation Agent with respect to each Valuation Date.

- (iv) If no such Valuation Method is specified in the applicable Final Terms, the Valuation Method shall be Average Highest.

- (v) The following Valuation Methods may be specified in the applicable Final Terms for a Series with more than one Reference Obligation and only one Valuation Date:

**"Blended Market"** means the unweighted arithmetic mean of the Market Value for each Reference Obligation determined by the Calculation Agent with respect to the Valuation Date; or

**"Blended Highest"** means the unweighted arithmetic mean of the highest Quotations obtained by the Calculation Agent for each Reference Obligation with respect to the Valuation Date.

- (vi) If no such Valuation Method is specified in the applicable Final Terms, the Valuation Method shall be Blended Highest.

- (vii) The following Valuation Methods may be specified in the applicable Final Terms for a Series with more than one Reference Obligation and more than one Valuation Date:

**"Average Blended Market"** means, using values with respect to each Valuation Date determined by the Calculation Agent in accordance with the Blended Market Valuation Method, the unweighted arithmetic mean of the values so determined with respect to each Valuation Date; or

**"Average Blended Highest"** means, using values with respect to each Valuation Date determined by the Calculation Agent in accordance with the Blended Highest Valuation Method, the unweighted arithmetic mean of the values so determined with respect to each Valuation Date.

- (viii) If no such Valuation Method is specified in the applicable Final Terms, the Valuation Method shall be Average Blended Highest.



- (ix) Notwithstanding paragraphs (i) to (viii) above, if Quotations include Weighted Average Quotations or fewer than two Full Quotations, the Valuation Method shall be Market, Average Market, Blended Market or Average Blended Market, as the case may be.

**"Valuation Time"** means the time specified as such in the applicable Final Terms or, if no time is so specified, 11.00 a.m. in the principal trading market for the Reference Obligation.

**"Voting Shares"** shall mean those shares or other interests that have the power to elect the board of directors or similar governing body of an entity.

**"Weighted Average Quotation"** means, in accordance with the Quotation Method, the weighted average of firm quotations obtained from Quotation Dealers at the Valuation Time, to the extent reasonably practicable, each for an amount of the Reference Obligation with an Outstanding Principal Balance of as large a size as available but less than the Quotation Amount (but, if a Minimum Quotation Amount is specified in the applicable Final Terms, of a size equal to the Minimum Quotation Amount or, if quotations of a size equal to the Minimum Quotation Amount are not available, quotations as near in size as practicable to the Minimum Quotation Amount) that in aggregate are approximately equal to the Quotation Amount.

### 3. **Final Redemption of Credit Linked Notes**

Unless previously redeemed or purchased and cancelled and subject as provided in Credit Linked Condition 4 and Credit Linked Condition 5, each Credit Linked Note will be redeemed by the Issuer at its relevant Final Redemption Amount specified in, or determined in the manner specified in, the applicable Final Terms in the Specified Currency on the Maturity Date specified in the applicable Final Terms.

### 4. **Conditions to Settlement – Cash Settlement**

If Conditions to Settlement are satisfied during the Notice Delivery Period (such date of satisfaction, the **"Credit Event Determination Date"**) and Condition to Settlement – Cash Settlement is specified in the applicable Final Terms, the Issuer shall give notice (such notice a **"Settlement Notice"**) to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, and redeem or cancel as applicable, all but not some only of the Securities and pay in respect of each Security the Credit Event Redemption Amount on the Credit Event Redemption Date.

*If Conditions to Settlement are satisfied and the Notes or Certificates become redeemable or are cancelled in accordance with this Credit Linked Condition 4, upon payment of the Credit Event Redemption Amount the Issuer shall have discharged its obligations in respect of the Securities and shall have no other liability or obligation whatsoever in respect thereof. The Credit Event Redemption Amount may be less than the Issue Price, nominal amount or notional amount, as applicable, of a Security. Any shortfall shall be borne by the Holder and no liability shall attach to the Issuer and/or the Guarantor.*

### 5. **Conditions to Settlement – Physical Settlement**

If Conditions to Settlement are satisfied during the Notice Delivery Period (such date of satisfaction, the **"Credit Event Determination Date"**) and Conditions to Settlement – Physical Delivery is specified in the applicable Final Terms, the Issuer shall give notice (such notice a **"Notice of Physical Settlement"**) to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, and redeem (in the case of Credit Linked Notes) or cancel (in the case of Credit Linked Certificates) all but not some only of the Securities, by Delivering in respect of each Security the Deliverable Obligations comprising the Entitlement, subject to and in accordance with the Note Conditions or W&C Security Conditions and the Credit Linked Conditions.

In the Notice of Physical Settlement, the Issuer shall specify the Deliverable Obligations comprising the Entitlement that it reasonably expects to Deliver. For the avoidance of doubt, the Issuer shall be entitled to select any of the Deliverable Obligations to constitute the Entitlement, irrespective of their market value.

If "Restructuring Maturity Limitation and Fully Transferable Obligation" is specified as applicable in the applicable Final Terms and Restructuring is the only Credit Event specified in a Credit Event Notice, then a Deliverable Obligation may be included in the Entitlement only if it (i) is a Fully Transferable Obligation and (ii) has a final maturity date not later than the Restructuring Maturity Limitation Date.

If "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation Applicable" is specified as applying in the applicable Final Terms and Restructuring is the only Credit Event specified in a Credit Event Notice, then a Deliverable Obligation may be included in the Entitlement only if it (i) is a Conditionally Transferable Obligation and (ii) has a final maturity date not later than the applicable Modified Restructuring Maturity Limitation Date.

***If Conditions to Settlement are satisfied and the Securities become redeemable or are cancelled in accordance with this Credit Linked Condition 5, upon Delivery of the Deliverable Obligations Deliverable and/or payment of the Partial Cash Settlement Amount, as the case may be, the Issuer shall have discharged its obligations in respect of the Securities and shall have no other liability or obligation whatsoever in respect thereof. The value of such Deliverable Obligations and/or the Partial Cash Settlement Amount in respect of the Securities to be redeemed may be less than the Issue Price, nominal amount or notional amount, as applicable, of a Security. Any shortfall shall be borne by the Holder and no liability shall attach to the Issuer and, in the case of Credit Linked Certificates, and/or the Guarantor.***

## **6. Repudiation/Moratorium Extension**

Where Repudiation/Moratorium is specified as a Credit Event in the applicable Final Terms, the provisions of this Credit Linked Condition 6 shall apply.

### **(a) In the case of Credit Linked Notes:**

Where Conditions to Settlement have not been satisfied on or prior to the Scheduled Maturity Notice Date but the Repudiation/Moratorium Extension Condition has been satisfied on or prior to the Scheduled Maturity Notice Date or, if Credit Linked Condition 8(y) applies, the Postponement Date (as defined below) and the Repudiation/Moratorium Evaluation Date in respect of such Potential Repudiation Moratorium will, in the sole determination of the Calculation Agent, fall after the Scheduled Maturity Notice Date, then the Calculation Agent shall notify the Noteholders in accordance with Note Condition 13 that a Potential Repudiation/Moratorium has occurred and:

- (i)** where a Repudiation/Moratorium has not occurred on or prior to the Repudiation/Moratorium Evaluation Date:
  - (A)** each Credit Linked Note will be redeemed by the Issuer by payment of the Final Redemption Amount on the second Business Day following the Repudiation/Moratorium Evaluation Date; and
  - (B)** in the case of interest bearing Notes, the Issuer shall be obliged to pay interest calculated as provided in Note Condition 4, accruing from (and including) the Interest Payment Date immediately preceding the Scheduled Maturity Date (or if none, the Interest Commencement Date) to (but excluding) the Scheduled Maturity Date but shall only be obliged to make such payment of interest on the second Business Day following the Repudiation/Moratorium Evaluation Date and no further or other amount in respect of interest shall be payable and no additional amount shall be payable in respect of such delay; or
- (ii)** where a Repudiation/Moratorium has occurred on or prior to the Repudiation/Moratorium Evaluation Date and Conditions to Settlement are satisfied in the Notice Delivery Period, the provisions of Credit Linked Condition 4 or Credit Linked Condition 5, as applicable, shall apply.

(b) In the case of Credit Linked Certificates:

Where Conditions to Settlement have not been satisfied on or prior to the Scheduled Exercise Date but the Repudiation/Moratorium Extension Condition has been satisfied on or prior to the Scheduled Exercise Date or, if Credit Linked Condition 9(y) applies, the Postponed Exercise Date (as defined below) and the Repudiation/Moratorium Evaluation Date in respect of such Potential Repudiation Moratorium will, in the sole determination of the Calculation Agent, fall after the Scheduled Exercise Date, then the Calculation Agent shall notify the Holders in accordance with W&C Securities Condition 10 that a Potential Repudiation/Moratorium has occurred and:

- (i) where a Repudiation/Moratorium has not occurred on or prior to the Repudiation/Moratorium Evaluation Date:
  - (A) the Exercise Date for the Certificates shall be postponed until the second Business Day following the Repudiation/Moratorium Evaluation Date; and
  - (B) in the case of additional amount bearing Certificates, the Issuer shall be obliged to pay additional amounts calculated as provided in W&C Securities Condition 30, accruing from (and including) the Additional Amount Payment Date immediately preceding the Scheduled Exercise Date (or if none, the Issue Date) to (but excluding) the Scheduled Exercise Date but shall only be obliged to make such payment of additional amounts on the second Business Day following the Repudiation/Moratorium Evaluation Date and no interest or other amounts shall be payable in respect of such delay; or
- (ii) where a Repudiation/Moratorium has occurred on or prior to the Repudiation/Moratorium Evaluation Date and Conditions to Settlement are satisfied in the Notice Delivery Period, the provisions of Credit Linked Condition 4 or Credit Linked Condition 5, as applicable, shall apply.

**7. Grace Period Extension**

If "Grace Period Extension" is specified as applicable in the applicable Final Terms, the provisions of this Credit Linked Condition 7 shall apply.

(a) In the case of Credit Linked Notes:

Where Conditions to Settlement have not been satisfied on or prior to the Scheduled Maturity Notice Date but a Potential Failure to Pay has occurred with respect to one or more Obligation(s) in respect of which a Grace Period is applicable on or prior to the Scheduled Maturity Notice Date (and such Grace Period(s) is/are continuing as at the Scheduled Maturity Notice Date), then the Calculation Agent shall notify the Noteholders in accordance with Note Condition 13 that a Potential Failure to Pay has occurred and:

- (i) where a Failure to Pay has not occurred on or prior to the Grace Period Extension Date:
  - (A) each Credit Linked Note will be redeemed by the Issuer by payment of the Final Redemption Amount on the second Business Day following the Grace Period Extension Date; and
  - (B) in the case of interest bearing Notes, the Issuer shall be obliged to pay interest calculated as provided in Note Condition 4, accruing from (and including) the Interest Payment Date immediately preceding the Scheduled Maturity Date (or if none the Interest Commencement Date) to (but excluding) the Scheduled Maturity Date but shall only be obliged to make such payment of interest on the second Business Day following the Grace Period Extension Date and no further or other amount in respect of interest shall be payable and no additional amount shall be payable in respect of such delay; or

- (ii) where a Failure to Pay has occurred on or prior to the Grace Period Extension Date and Conditions to Settlement are satisfied in the Notice Delivery Period the provisions of Credit Linked Condition 4 or Credit Linked Condition 5, as applicable, shall apply to the Notes.

(b) In the case of Credit Linked Certificates:

Where Conditions to Settlement have not been satisfied on or prior to the Scheduled Exercise Date but a Potential Failure to Pay has occurred with respect to one or more Obligation(s) in respect of which a Grace Period is applicable on or prior to the Scheduled Exercise Date (and such Grace Period(s) is/are continuing as at the Scheduled Exercise Date), then the Calculation Agent shall notify such Potential Failure to Pay to the Holders in accordance with W&C Securities Condition 10 and:

- (i) where a Failure to Pay has not occurred on or prior to the Grace Period Extension Date:
  - (A) the Exercise Date for the Certificates should be postponed until the Grace Period Extension Date; and
  - (B) in the case of additional amount bearing Certificates, the Issuer shall be obliged to pay additional amounts calculated as provided in W&C Securities Condition 30 accruing from (and including) the Additional Amount Payment Date immediately preceding the Scheduled Exercise Date (or if none the Issue Date) to (but excluding) the Scheduled Exercise Date but shall only be obliged to make such payment of additional amounts on the Grace Period Extension Date and no interest or other amounts shall be payable in respect of such delay; or
- (ii) where a Failure to Pay has occurred on or prior to the Grace Period Extension Date and Conditions to Settlement are satisfied in the Notice Delivery Period the provisions of Credit Linked Condition 4 or Credit Linked Condition 5, as applicable, shall apply.

**8. Maturity Date Extension in the case of Credit Linked Notes**

The following provisions apply to Credit Linked Notes:

If:

- (x) on (A) the Scheduled Maturity Notice Date or, (B) if applicable, the Repudiation/Moratorium Evaluation Date, or (C) if Grace Period Extension is specified as applying in the applicable Final Terms, the Grace Period Extension Date, as the case may be, Conditions to Settlement have not been satisfied but, in the opinion of the Calculation Agent, a Credit Event may have occurred; or
- (y) on the Scheduled Maturity Notice Date, in the opinion of the Calculation Agent a Potential Repudiation/Moratorium may have occurred,

the Calculation Agent may notify the Noteholders in accordance with Note Condition 13 that the Scheduled Maturity Notice Date, the Repudiation/Moratorium Evaluation Date or the Grace Period Extension Date, as the case may be, has been postponed to a date (such date the "**Postponement Date**") specified in such notice falling 15 Business Days after the Scheduled Maturity Date, the Repudiation/Moratorium Evaluation Date or the Grace Period Extension Date, as the case may be, or if such day is not a Business Day the immediately succeeding Business Day and

where:

- (i) in the case of Credit Linked Condition 8(x), Conditions to Settlement are not satisfied on or prior to the Postponement Date, or, in the case of Credit Linked Condition 8(y), the Repudiation/Moratorium Extension Condition is not satisfied on or prior to the Postponement Date:

- (A) subject as provided below each Credit Linked Note equal to the Calculation Amount will be redeemed by the Issuer by payment of the Final Redemption Amount on the second Business Day following Postponement Date; and
  - (B) in the case of interest bearing Notes, the Issuer shall be obliged to pay interest calculated as provided in Note Condition 4 accruing from (and including) the Interest Payment Date immediately preceding the Scheduled Maturity Date (or, if none the Interest Commencement Date) to (but excluding) the Scheduled Maturity Date but shall only be obliged to make such payment of interest on the second Business Day following Postponement Date and no further or other amount in respect of interest shall be payable and no additional amount shall be payable in respect of such delay; or
- (ii) where:
- (A) in the case of Credit Linked Condition 8(x), Conditions to Settlement are satisfied on or prior to the Postponement Date, the provisions of Credit Linked Condition 4 or 5, as applicable, shall apply to the Notes; or
  - (B) in the case of Credit Linked Condition 8(y) the Repudiation/Moratorium Extension Condition is satisfied on or prior to the Postponement Date, the provisions of Credit Linked Condition 6 shall apply to the Notes.

**9. Exercise Date Extension in the case of Credit Linked Certificates**

The following provisions apply to Credit Linked Certificates:

If the Exercise Date is scheduled to fall:

- (x) on (A) the Scheduled Exercise Date or, (B) if applicable, the Repudiation/Moratorium Evaluation Date, or (C) if Grace Period Extension is specified as applying in the applicable Final Terms, the Grace Period Extension Date, as the case may be, and on such date Conditions to Settlement have not been satisfied but, in the opinion of the Calculation Agent, a Credit Event may have occurred; or
- (y) on the Scheduled Exercise Date, and in the opinion of the Calculation Agent a Potential Repudiation/Moratorium may have occurred,

the Calculation Agent may notify the Holders in accordance with W&C Securities Condition 10 that the Exercise Date has been postponed to a date (such date the "**Postponed Exercise Date**") specified in such notice falling 15 Business Days after the Scheduled Exercise Date, the Repudiation/Moratorium Evaluation Date or the Grace Period Extension Date, as the case may be, or if such day is not a Business Day the immediately succeeding Business Day and

where:

- (i) in the case of Credit Linked Condition 9(x), Conditions to Settlement are not satisfied on or prior to the Postponed Exercise Date, or, in the case of Credit Linked Condition 9(y), the Repudiation/Moratorium Extension Condition is not satisfied on or prior to the Postponed Exercise Date:
  - (A) subject as provided below each Credit Linked Certificate will be automatically exercised on the Postponed Exercise Date and the provisions of W&C Securities Conditions 29 will apply; and
  - (B) in the case of additional amounts bearing Certificates, the Issuer shall be obliged to pay additional amounts calculated as provided in W&C Securities Condition 30 accruing from (and including) the Additional Amount Payment Date immediately preceding the Scheduled Exercise Date (or, if none, the Issue Date) to (but excluding) the Scheduled Exercise Date but shall only be obliged to make such payment of additional amounts on the Postponed Exercise Date and no interest or other amount shall be payable in respect of such delay; or
- (ii) where:

- (A) in the case of Credit Linked Condition 9(x), Conditions to Settlement are satisfied on or prior to the Postponed Exercise Date, the provisions of Credit Linked Condition 4 or 5, as applicable, shall apply; or
- (B) in the case of Credit Linked Condition 9(y), the Repudiation/Moratorium Extension Condition is satisfied on or prior to the Postponed Exercise Date, the provisions of Credit Linked Condition 6 shall apply to the Certificates.

**10. Partial Cash Settlement**

If all or a portion of the Undeliverable Obligations or Hedge Disruption Obligations comprising the Entitlement are not Delivered by the Final Delivery Date, the Issuer shall give notice (a "**Partial Cash Settlement Notice**") to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, and the Issuer shall pay in respect of each Undeliverable Obligation or Hedge Disruption Obligation, as the case may be, the Partial Cash Settlement Amount on the Partial Cash Settlement Date.

In the Partial Cash Settlement Notice the Issuer must give details of why it is unable to deliver the relevant Undeliverable Obligations or Hedge Disruption Obligation, as the case may be.

Unless otherwise specified in the applicable Final Terms, for the purposes of this Credit Linked Condition 10 the following terms are deemed to have the following meanings:

**"Indicative Quotation"** means, in accordance with the Quotation Method, each quotation obtained from a Quotation Dealer at the Valuation Time for (to the extent reasonably practicable) an amount of the Undeliverable Obligation or Hedge Disruption Obligation, as the case may be, equal to the Quotation Amount, which reflects such Quotation Dealer's reasonable assessment of the price of such Undeliverable Obligation or Hedge Disruption Obligation, as the case may be, based on such factors as such Quotation Dealer may consider relevant, which may include historical prices and recovery rates.

**"Market Value"** means, with respect to an Undeliverable Obligation or Hedge Disruption Obligation, as the case may be, on a Valuation Date, (i) if more than three Full Quotations are obtained, the arithmetic mean of such Full Quotations, disregarding the Full Quotations having the same highest and lowest values (and, if more than one such Full Quotations have the same highest or lowest value, then one of such highest or lowest Full Quotations shall be disregarded); (ii) if exactly three Full Quotations are obtained, the Full Quotations remaining after disregarding the highest and lowest Full Quotations (and, if more than one such Full Quotations have the same highest value or lowest value, then one of such highest or lowest Full Quotations shall be disregarded); (iii) if exactly two Full Quotations are obtained, the arithmetic mean of such Full Quotations; (iv) if fewer than two Full Quotations are obtained and a Weighted Average Quotation is obtained, such Weighted Average Quotation; (v) if Indicative Quotations are specified as applying in the applicable Final Terms and exactly three Indicative Quotations are obtained, the Indicative Quotation remaining after disregarding the highest and lowest Indicative Quotations (and, if more than one such Indicative Quotations have the same highest or lowest value, then one of such highest or lowest Indicative Quotations shall be disregarded); (vi) if fewer than two Full Quotations are obtained and no Weighted Average Quotation is obtained (and, if Indicative Quotations are applicable, fewer than three Indicative Quotations are obtained) then, subject to paragraph (ii) of the definition of "Quotation" below, an amount as determined by the Calculation Agent on the next Business Day on which two or more Full Quotations or a Weighted Average Quotation or, if applicable, three Indicative Quotations are obtained; and (vii) if fewer than two Full Quotations are obtained and no Weighted Average Quotation is obtained (and, if Indicative Quotations are applicable, fewer than three Indicative Quotations are obtained) on the same Business Day on or prior to the tenth Business Day following the Valuation Date, the Market Value shall be any Full Quotation obtained from a Quotation Dealer at the Valuation Time on such tenth Business Day or, if no Full Quotation is obtained, the weighted average of any firm quotations (or, if applicable, Indicative Quotations) for the Undeliverable Obligation or Hedge Disruption Obligation, as the case may be, obtained from Quotation Dealers at the Valuation Time on such tenth Business Day with respect to the aggregate portion of the Quotation Amount for which such quotations were obtained and a quotation deemed to

be zero for the balance of the Quotation Amount for which firm quotations (or, if applicable, Indicative Quotations) were not obtained on such day.

**"Partial Cash Settlement Amount"** is deemed to be, for each Undeliverable Obligation or Hedge Disruption Obligation, as the case may be, an amount calculated by the Calculation Agent equal to the greater of (i) (A) the Outstanding Principal Balance, the Due and Payable Amount or the Currency Amount, as applicable, of each Undeliverable Obligation or Hedge Disruption Obligation, as the case may be, multiplied by (B) the Final Price with respect to such Undeliverable Obligation or Hedge Disruption Obligation, as the case may be, less (C) Unwind Costs, if any (but excluding any Unwind Costs already taken into account in calculating the relevant Entitlement), and (ii) zero.

**"Partial Cash Settlement Date"** is deemed to be the date falling three Business Days after the calculation of the Final Price;

**"Quotation"** means each Full Quotation, the Weighted Average Quotation and, if Indicative Quotations are specified as applying in the applicable Final Terms, each Indicative Quotation obtained and expressed as a percentage with respect to a Valuation Date in the manner that follows:

- (i) The Calculation Agent shall attempt to obtain Full Quotations with respect to each Valuation Date from five or more Quotation Dealers. If the Calculation Agent is unable to obtain two or more such Full Quotations on the same Business Day within three Business Days of a Valuation Date, then on the next following Business Day (and, if necessary, on each Business Day thereafter until the tenth Business Day following the relevant Valuation Date) the Calculation Agent shall attempt to obtain Full Quotations from five or more Quotation Dealers, and, if two or more Full Quotations are not available, a Weighted Average Quotation. If two or more such Full Quotations or a Weighted Average Quotation are not available on any such Business Day and Indicative Quotations are specified as applying in the applicable Final Terms, the Calculation Agent shall attempt to obtain three Indicative Quotations from five or more Quotation Dealers.
- (ii) If the Calculation Agent is unable to obtain two or more Full Quotations or a Weighted Average Quotation (or, if Indicative Quotations are specified as applying in the applicable Final Terms, three Indicative Quotations) on the same Business Day on or prior to the tenth Business Day following the Valuation Date, the Quotations shall be deemed to be any Full Quotation obtained from a Quotation Dealer at the Valuation Time on such tenth Business Day or, if no Full Quotation is obtained, the weighted average of any firm quotations (or, if applicable, Indicative Quotations) for the Undeliverable Obligation or Hedge Disruption Obligation, as the case may be, obtained from Quotation Dealers at the Valuation Time on such tenth Business Day with respect to the aggregate portion of the Quotation Amount for which such quotations were obtained and a quotation deemed to be zero for the balance of the Quotation Amount for which firm quotations (or, if applicable, Indicative Quotations) were not obtained on such day.
- (iii) The Calculation Agent shall determine, based on the then current market practice in the market of the relevant Undeliverable Obligation or Hedge Disruption Obligations, as the case may be, whether such Quotations shall include or exclude accrued but unpaid interest. All Quotations shall be obtained in accordance with this specification or determination.
- (iv) If any Quotation obtained with respect to an Accreting Obligation is expressed as a percentage of the amount payable in respect of such obligation at maturity, such Quotation will instead be expressed as a percentage of the Outstanding Principal Balance for the purposes of determining the Final Price.

**"Quotation Amount"** is deemed to be, with respect to each type or issue of Undeliverable Obligation or Hedge Disruption Obligations, as the case may be, an amount equal to the Outstanding Principal Balance or Due and Payable Amount (or, in either case, its equivalent in the relevant Obligation Currency converted by the Calculation Agent in a commercially reasonable manner by reference to exchange rates in effect at the time that the relevant Quotation is being obtained), as applicable, of such Undeliverable Obligation or Hedge Disruption Obligations, as the case may be.

**"Quotation Method"** is deemed to be Bid.

**"Reference Obligation"** is deemed to be each Undeliverable Obligation or Hedge Disruption Obligations, as the case may be.

**"Valuation Method"** is deemed to be Highest unless fewer than two Full Quotations are obtained or a Weighted Average Quotation applies (or, if applicable, Indicative Quotations), in which case "Valuation Method" is deemed to be Market.

**"Valuation Time"** is the time specified as such in the applicable Final Terms, or, if no time is so specified, 11:00 a.m. in the principal trading market for the Undeliverable Obligation or Hedge Disruption Obligations, as the case may be.

**"Weighted Average Quotation"** means, in accordance with the Quotation Method, the weighted average of firm quotations obtained from Quotation Dealers at the Valuation Time, to the extent reasonably practicable, each for an amount of the Undeliverable Obligation or Hedge Disruption Obligations, as the case may be, with an Outstanding Principal Balance of as large a size as available but less than the Quotation Amount that in aggregate are approximately equal to the Quotation Amount.

**11. Redemption following a Merger Event**

If this Credit Linked Condition 11 is specified as applicable in the applicable Final Terms, in the event that in the determination of the Calculation Agent a Merger Event has occurred, the Issuer may give notice to the Holders in accordance with Note Condition 13 or W&C Securities Condition 10, as applicable, and redeem or cancel, as applicable, all but not some only of the Securities at the Merger Event Redemption Amount on the Merger Event Redemption Date.

**12. Credit Event Notice after Restructuring Credit Event**

If this Credit Linked Condition 12 is specified as applicable in the applicable Final Terms, then, notwithstanding anything to the contrary in the Terms and Conditions, upon the occurrence of a Restructuring Credit Event during the Notice Delivery Period:

(a) in the case of Credit Linked Notes:

- (i) the Calculation Agent may deliver a Credit Event Notice in respect of an amount (the **"Partial Redemption Amount"**) that is less than the principal amount outstanding of each Note immediately prior to the delivery of such Credit Event Notice. In such circumstances the Credit Linked Conditions and related provisions shall be deemed to apply to the Partial Redemption Amount only and each such Note shall be redeemed in part (such redeemed part being equal to the Partial Redemption Amount).
- (ii) For the avoidance of doubt (A) the principal amount of each such Note not so redeemed in part shall remain outstanding and interest shall accrue on the principal amount outstanding of such Note as provided in Note Condition 4 (adjusted in such manner as the Calculation Agent in its sole and absolute discretion determines to be appropriate), (B) the Credit Linked Conditions and related provisions shall apply to such principal amount outstanding of such Note in the event that subsequent Credit Event Notices are delivered in respect of the Reference Entity that was the subject of the Restructuring Credit Event and (C) once a Credit Event Notice with respect to a Restructuring Credit Event has been delivered in respect of a Reference Entity, no further Credit Event Notices may be delivered in respect of any Reference Entity other than the Reference Entity that was the subject of the Restructuring Credit Event.
- (iii) If the provisions of this Credit Linked Condition 12(a) apply in respect of the Notes, on redemption of part of each such Note the relevant Note or, if the Notes are represented by a Global Note, such Global Note, shall be endorsed to reflect such part redemption.



- (b) in the case of Credit Linked Certificates:
- (i) the Calculation Agent may deliver a Credit Event Notice in respect of an amount (the "**Partial Cancellation Amount**") that is less than the Notional Amount of each Certificate immediately prior to the delivery of such Credit Event Notice. In such circumstances the Credit Linked Conditions and related provisions shall be deemed to apply to the Partial Cancellation Amount only and each such Certificate shall be cancelled in part (such cancelled part being equal to the Partial Cancellation Amount).
  - (ii) For the avoidance of doubt (A) the Notional Amount, part or other amount of each such Certificate not so redeemed in part shall remain outstanding and additional amounts (if applicable) shall accrue on the Notional Amount outstanding of such Certificate as provided in W&C Securities Condition 30 (adjusted in such manner as the Calculation Agent in its sole and absolute discretion determines to be appropriate), (B) the provisions of the Credit Linked Conditions and related provisions shall apply to such amount or part outstanding of such Certificate in the event that subsequent Credit Event Notices are delivered in respect of the Reference Entity that was the subject of the Restructuring Credit Event and (C) once a Credit Event Notice with respect to a Restructuring Credit Event has been delivered in respect of a Reference Entity, no further Credit Event Notices may be delivered in respect of any Reference Entity other than the Reference Entity that was the subject of the Restructuring Credit Event.
  - (iii) If the provisions of this Credit Linked Condition 12(b) apply in respect of the Certificates, on cancellation of part of each such Certificate the relevant Certificate or, if the Certificates are represented by a Global Certificate, such Global Certificate shall be endorsed to reflect such part redemption.

**13. Provisions relating to Multiple Holder Obligation**

If this Credit Linked Condition 13 is specified as applicable in the applicable Final Terms, notwithstanding anything to the contrary in the definition of Restructuring and related provisions, the occurrence of, agreement to, or announcement of, any of the events described in sub-paragraphs (i) to (v) of the definition of "Restructuring" in Credit Linked Condition 2 shall not be a Restructuring unless the Obligation in respect of any such events is a Multiple Holder Obligation.

"**Multiple Holder Obligation**" means an Obligation that (i) at the time of the event which constitutes a Restructuring Credit Event is held by more than three holders that are not Affiliates of each other and (ii) with respect to which a percentage of holders (determined pursuant to the terms of the Obligation as in effect on the date of such event) at least equal to sixty-six and two-thirds is required to consent to the event which constitutes a Restructuring Credit Event.

**14. Provisions taken from the ISDA supplement titled "Additional Provisions for Physically Settled Default Swaps - Monoline Insurer as Reference Entity (January 2005)"**

If Credit Linked Condition 14 is specified as applicable in the applicable Final Terms, the following provisions will apply:

- (a) **Obligation and Deliverable Obligation.** Paragraph (a) of the definition of "Obligation" in Credit Linked Condition 2 and paragraph (a) of the definition of "Deliverable Obligation" in Credit Linked Condition 2 are hereby amended by adding "or Qualifying Policy" after "or as provider of a Qualifying Affiliate Guarantee".
- (b) **Interpretation of Provisions.** In the event that an Obligation or a Deliverable Obligation is a Qualifying Policy, paragraph (B) of the definition of "Deliverable Obligation" in Credit Linked Condition 2 will apply, with references to the "Qualifying Guarantee", the "Underlying Obligation" and the "Underlying Obligor" deemed to include the "Qualifying Policy", the "Insured Instrument" and the "Insured Obligor", respectively, except that:
  - (i) the Obligation Category Borrowed Money and the Obligation Category and Deliverable Obligation Category Bond shall be deemed to include distributions

payable under an Insured Instrument in the form of a pass-through certificate or similar funded beneficial interest, the Deliverable Obligation Category Bond shall be deemed to include such an Insured Instrument, and the terms "obligation" and "obligor" as used in the Credit Linked Conditions in respect of such an Insured Instrument shall be construed accordingly;

- (ii) references in the definitions of "Assignable Loan" and "Consent Required Loan" to "the "guarantor" and "guaranteeing" shall be deemed to include "the "insurer" and "insuring", respectively;
- (iii) neither the Qualifying Policy nor the Insured Instrument must satisfy on the relevant date the Deliverable Obligation Characteristic of Accelerated or Matured, whether or not that characteristic is otherwise specified as applicable in the applicable Final Terms;
- (iv) if the Assignable Loan, Consent Required Loan, Direct Loan Participation or Transferable Deliverable Obligation Characteristics are specified in the applicable Final Terms and if the benefit of the Qualifying Policy is not transferred as part of any transfer of the Insured Instrument, the Qualifying Policy must be transferable at least to the same extent as the Insured Instrument; and
- (v) with respect to an Insured Instrument in the form of a pass-through certificate or similar funded beneficial interest, the term "Outstanding Principal Balance" shall mean the outstanding Certificate Balance and "maturity", as such term is used in the Maximum Maturity Deliverable Obligation Characteristic, shall mean the specified date by which the Qualifying Policy guarantees or insures, as applicable, that the ultimate distribution of the Certificate Balance will occur.

For the avoidance of doubt, if Credit Linked Condition 15 is specified as applying in the applicable Final Terms, the amendments to paragraph (B) of the definition of "Deliverable Obligation" in Credit Linked Condition 2 provided in Credit Linked Condition 15 shall not be construed to apply to Qualifying Policies and Insured Instruments.

- (c) Not Contingent. An Insured Instrument will not be regarded as failing to satisfy the Not Contingent Deliverable Obligation Characteristic solely because such Insured Instrument is subject to provisions limiting recourse in respect of such Insured Instrument to the proceeds of specified assets (including proceeds subject to a priority of payments) or reducing the amount of any Instrument Payments owing under such Insured Instrument, provided that such provisions are not applicable to the Qualifying Policy by the terms thereof and the Qualifying Policy continues to guarantee or insure, as applicable, the Instrument Payments that would have been required to be made absent any such limitation or reduction. By specifying that this Credit Linked Condition 14 is applicable, no inference should be made as to the interpretation of the "Not Contingent" Deliverable Obligation Characteristic in the context of limited recourse or similar terms applicable to Deliverable Obligations other than Qualifying Policies.
- (d) Deliver. For the purposes of the definition of "Deliver" in Credit Linked Condition 2, "Deliver" with respect to an obligation that is a Qualifying Policy means to Deliver both the Insured Instrument and the benefit of the Qualifying Policy (or a custodial receipt issued by an internationally recognised custodian representing an interest in such an Insured Instrument and the related Qualifying Policy), and "Delivery" and "Delivered" will be construed accordingly.
- (e) Provisions for Determining a Successor. The paragraph commencing "For the purposes of this definition of "Successor" ... " in the definition of "Successor" in Credit Linked Condition 2 is hereby amended by adding "or insurer" after "or guarantor".
- (f) Substitute Reference Obligation. The first paragraph of the definition of "Substitute Reference Obligation" and paragraph (b) thereof in Credit Linked Condition 2 is hereby amended by adding "or Qualifying Policy" after "or as provider of a Qualifying Affiliate Guarantee". For the purposes of sub-paragraph (a)(ii)(B) of the definition of "Substitute Reference Obligation", references to "the Qualifying Guarantee" and the "Underlying

Obligation" shall be deemed to include "the Qualifying Policy" and "the Insured Instrument" respectively.

(g) Restructuring

(i) With respect to an Insured Instrument that is in the form of a pass-through certificate or similar funded beneficial interest or a Qualifying Policy with respect thereto, paragraphs (i) to (v) inclusive of the definition of "Restructuring" in Credit Linked Condition 2 are hereby amended to read as follows:

- "(i) a reduction in the rate or amount or the Instrument Payments in clause (A)(x) of the definition thereof that are guaranteed or insured by the Qualifying Policy;
- (ii) a reduction in the amount of the Instrument Payments described in clause (A)(y) of the definition thereof that are guaranteed or insured by the Qualifying Policy;
- (iii) a postponement or other deferral of a date or dates for either (x) the payment or accrual of the Instrument Payments described in clause (A)(x) of the definition thereof or (y) the payment of the Instrument Payments described in clause (A)(y) of the definition thereof, in each case that are guaranteed or insured by the Qualifying Policy;
- (iv) a change in the ranking in priority of payment of (x) any Obligation under a Qualifying Policy in respect of Instrument Payments, causing the Subordination of such Obligation to any other Obligation or (y) any Instrument Payments, causing the Subordination of such Insured Instrument to any other instrument in the form of a pass-through certificate or similar funded beneficial interest issued by the Insured Obligor, it being understood that, for this purpose, Subordination will be deemed to include any such change that results in a lower ranking under a priority of payments provision applicable to the relevant Instrument Payments; or
- (v) any change in the currency or composition of any payment of Instrument Payments that are guaranteed or insured by the Qualifying Policy to any currency which is not a Permitted Currency."

(ii) Paragraph (c) of the definition of "Restructuring" in Credit Linked Condition 2 is hereby amended by adding "or, in the case of a Qualifying Policy and an Insured Instrument, where (A) the Qualifying Policy continues to guarantee or insure, as applicable, that the same Instrument Payments will be made on the same dates on which the Qualifying Policy guaranteed or insured that such Instrument Payments would be made prior to such event and (B) such event is not a change in the ranking in the priority of payment of the Qualifying Policy" after "Reference Entity".

(iii) The definition of "Restructuring" in Credit Linked Condition 2 is hereby amended by the insertion of the following paragraph after the final paragraph thereof:

"For purposes of the definition of "Restructuring" in Credit Linked Condition 2 and if Credit Linked Condition 13 is specified as applying in the applicable Final Terms, for the purposes of the Credit Linked Conditions the term Obligation shall be deemed to include Insured Instruments for which the Reference Entity is acting as provider of a Qualifying Policy. In the case of a Qualifying Policy and an Insured Instrument, references to the Reference Entity in the definition of "Restructuring" shall be deemed to refer to the Insured Obligor and the reference to the Reference Entity in paragraphs (a) to (c) inclusive in the definition of "Restructuring" shall continue to refer to the Reference Entity. "

(h) Fully Transferable Obligation and Conditionally Transferable Obligation. In the event that "Restructuring Maturity Limitation and Fully Transferable Obligation" and/or "Modified Restructuring Maturity Limitation and Conditionally Transferable Obligation" is specified as

applying in the applicable Final Terms and a Fully Transferable Obligation or Conditionally Transferable Obligation is a Qualifying Policy, the Insured Instrument must meet the requirements of the relevant definition. References in the definition of "Conditionally Transferable Obligation" to the "guarantor" and "guaranteeing" shall be deemed to include "the insurer" and "insuring" respectively. With respect to an Insured Instrument in the form of a pass-through certificate or similar funded beneficial interest, the term "final maturity date", as such term is used in Credit Linked Condition 5 and the definition of "Restructuring Maturity Limitation Date", shall mean the specified date by which the Qualifying Policy guarantees or insures, as applicable, that the ultimate distribution of the Certificate Balance will occur.

- (i) **Other Provisions.** For purposes of paragraph (a)(ii) of the definition of "Deliverable Obligation" and the definitions of "Credit Event" and "Deliver" in Credit Linked Condition 2, references to the "Underlying Obligation" and the "Underlying Obligor" shall be deemed to include "Insured Instruments" and the "Insured Obligor" respectively.

- (j) **Additional Definitions.**

**"Qualifying Policy"** means a financial guaranty insurance policy or similar financial guarantee pursuant to which a Reference Entity irrevocably guarantees or insures all Instrument Payments of an instrument that constitutes Borrowed Money (modified as set forth in this Credit Linked Condition 14) (the **"Insured Instrument"**) for which another party (including a special purpose entity or trust) is the obligor (the **"Insured Obligor"**). Qualifying Policies shall exclude any arrangement (i) structured as a surety bond, letter of credit or equivalent legal arrangement or (ii) pursuant to the express contractual terms of which the payment obligations of the Reference Entity can be discharged or reduced as a result of the occurrence or non-occurrence of an event or circumstance (other than the payment of Instrument Payments);

**"Instrument Payments"** means (A) in the case of any Insured Instrument that is in the form of a pass-through certificate or similar funded beneficial interest, (x) the specified periodic distributions in respect of interest or other return on the Certificate Balance on or prior to the ultimate distribution of the Certificate Balance and (y) the ultimate distribution of the Certificate Balance on or prior to a specified date and (B) in the case of any other Insured Instrument, the scheduled payments of principal and interest, in the case of both (A) and (B) (1) determined without regard to limited recourse or reduction provisions of the type described in Credit Linked Condition 14(c) above and (2) excluding sums in respect of default interest, indemnities, tax gross-ups, make-whole amounts, early redemption premiums and other similar amounts (whether or not guaranteed or insured by the Qualifying Policy).

**"Certificate Balance"** means, in the case of an Insured Instrument that is in the form of a pass-through certificate or similar funded beneficial interest, the unit principal balance, certificate balance or similar measure of unreimbursed principal investment.

## 15. Supplement to provisions relating to Qualifying Guarantee and Underlying Obligation

- (a) If this Credit Linked Condition 15 is specified as applicable in the applicable Final Terms, the Credit Linked Conditions shall be amended by:

- (i) the deletion of the definition of "Downstream Affiliate" and the substitution of the following therefor:

**"Downstream Affiliate"** means an entity whose outstanding Voting Shares were, at the date of issuance of the Qualifying Guarantee, more than 50 per cent. owned, directly or indirectly, by the Reference Entity.";

- (ii) the deletion of paragraphs (B)(4)(b) and (B)(4)(c) of the definition of "Deliverable Obligation", the substitution of the following therefor and the re-numbering of the remaining paragraphs accordingly:

- "(ii) For purposes of the application of the Obligation Characteristics or the Deliverable Obligation Characteristics, both the Qualifying Guarantee and the Underlying Obligation must satisfy on the relevant date each of the applicable Obligation Characteristics or Deliverable Obligation Characteristics, if any, specified in the applicable Final Terms from the following list: Not Subordinated, Specified Currency, Not Sovereign Lender, Not Domestic Currency and Not Domestic Law. For these purposes, unless otherwise specified in the applicable Final Terms, (A) the lawful currency of any of Canada, Japan, Switzerland, the United Kingdom or the United States of America or the euro shall not be a Domestic Currency and (B) the laws of England and the laws of the State of New York shall not be a Domestic Law."; and
- (iii) the deletion of the definition of "Qualifying Guarantee" and the substitution of the following therefor:

**"Qualifying Guarantee"** means an arrangement evidenced by a written instrument pursuant to which a Reference Entity irrevocably agrees (by guarantee of payment or equivalent legal arrangement) to pay all amounts due under an obligation (the **"Underlying Obligation"**) for which another party is the obligor (the **"Underlying Obligor"**). Qualifying Guarantees shall exclude any arrangement (i) structured as a surety bond, financial guarantee insurance policy, letter of credit or equivalent legal arrangement or (ii) pursuant to the terms of which the payment obligations of the Reference Entity can be discharged, reduced or otherwise altered or assigned (other than by operation law) as a result of the occurrence or non-occurrence of an event or circumstance (other than payment). The benefit of a Qualifying Guarantee must be capable of being Delivered together with the Delivery of the Underlying Obligation."

- (b) Credit Linked Condition 13 shall be amended by the insertion of the following at the end of the first paragraph thereof:

"provided that any Obligation that is a Bond shall be deemed to satisfy the requirement in (ii) of the definition of "Multiple Holder Obligation" below".

**16. Provisions taken from the ISDA supplement titled Additional Provisions for LPN Reference Entities (published on 3rd October, 2006)**

If Credit Linked Condition 16 is specified as applicable in the applicable Final Terms, notwithstanding anything to the contrary in the Credit Linked Conditions, the following provisions will apply:

- (a) Provisions relating to Multiple Holder Obligation will be deemed to be Not Applicable with respect to any Reference Obligation (and any Underlying Loan);
- (b) each Reference Obligation will be an Obligation, notwithstanding anything to the contrary in the Credit Linked Conditions including, but not limited to the definition of "Obligation" in Credit Linked Condition 2, and in particular, notwithstanding that the obligation is not an obligation of the Reference Entity;
- (c) each Reference Obligation will be a Deliverable Obligation notwithstanding anything to the contrary in the Credit Linked Conditions including, but not limited to the definition of "Deliverable Obligation" in Credit Linked Condition 2 and in particular, notwithstanding that the obligation is not an obligation of the Reference Entity.

For the avoidance of doubt with respect to any LPN Reference Obligation that specifies an Underlying Loan or an Underlying Finance Instrument, the outstanding principal balance shall be determined by reference to the Underlying Loan or Underlying Finance Instrument (as applicable) relating to such LPN Reference Obligation.

The Not Subordinated Obligation Characteristic and Deliverable Obligation Characteristic shall be construed as if no Reference Obligation was specified in respect of the Reference Entity;

- (d) the definition of Reference Obligation shall be deleted and the following substituted therefor:

**"Reference Obligation"** means, as of the Trade Date, each of the obligations listed as a Reference Obligation of the Reference Entity in the applicable Final Terms or set forth on the relevant LPN Reference Obligations List (each a **"Markit Published LPN Reference Obligation"**), as published by Markit Group Limited, or any successor thereto, which list is as of the Issue Date available at <http://www.markit.com/marketing/services.php>, any Additional LPN and each Additional Obligation."; and

- (e) the following additional definitions shall apply:

**"Additional LPN"** means any bond issued in the form of a loan participation note (a **"LPN"**) by an entity (the **"LPN Issuer"**) for the sole purpose of providing funds for the LPN Issuer to (a) finance a loan to the Reference Entity (the **"Underlying Loan"**) or (b) provide finance to the Reference Entity by way of a deposit, loan or other Borrowed Money instrument (the **"Underlying Finance Instrument"**), provided that (i) either (x) in the event that there is an Underlying Loan with respect to such LPN the Underlying Loan satisfies the Obligation Characteristics specified in respect of the Reference Entity or (y) in the event that there is an Underlying Finance Instrument with respect to such LPN the Underlying Finance Instrument satisfies the Not Subordinated, Not Domestic Law and Not Domestic Currency Obligation Characteristics (ii) the LPN satisfies the following Deliverable Obligation Characteristics: Transferable, Not Bearer, Credit Linked Specified Currency – Standard Specified Currencies, Not Domestic Law, Not Domestic Issuance; and (iii) the LPN Issuer has, as of the issue date of such obligation, granted a First Ranking Interest over or in respect of certain of its rights in relation to the relevant Underlying Loan or Underlying Finance Instrument (as applicable) for the benefit of the holders of the LPNs.

**"Additional Obligation"** means each of the obligations listed as an Additional Obligation of the Reference Entity in the applicable Final Terms or set forth on the relevant LPN Reference Obligations List (each a **"Markit Published LPN Reference Obligation"**), as published by Markit Group Limited, or any successor thereto, as of the Trade Date, which list is currently available at <http://www.markit.com/marketing/services.php>.

**"First Ranking Interest"** means a charge, security interest (or other type of interest having similar effect) (an **"Interest"**), which is expressed as being "first ranking", "first priority", or similar (**"First Ranking"**) in the document creating such Interest (notwithstanding that such Interest may not be First Ranking under any insolvency laws of any related insolvency jurisdiction of the LPN Issuer).

**"LPN Reference Obligation"** means each Reference Obligation other than any Additional Obligation.

For the avoidance of doubt, any change to the issuer of an LPN Reference Obligation in accordance with its terms shall not prevent such LPN Reference Obligation constituting a Reference Obligation.

Each LPN Reference Obligation is issued for the sole purpose of providing funds for the Issuer to finance a loan to the Reference Entity. For the purposes of the Credit Linked Conditions each such loan shall be an Underlying Loan.

## 17. Deliverable Obligations Portfolio Valuation

If Credit Linked Condition 17 is specified as applicable in the applicable Final Terms:

- (a) notwithstanding anything to the contrary in the Credit Linked Conditions, **"Reference Obligation"** shall mean:
- (i) any obligation of a Reference Entity (either directly, as provider of a Qualifying Affiliate Guarantee or, if All Guarantees is specified as applicable in the applicable Final Terms, as provider of any Qualifying Guarantee) determined pursuant to the

method described in "(A) Method for Determining Deliverable Obligations" above (but excluding any Excluded Deliverable Obligation specified in the applicable Final Terms) that (i) is payable in an amount equal to its Outstanding Principal Balance or Due and Payable Amount, as applicable, (ii) is not subject to any counterclaim, defence (other than a counterclaim or defence based on the factors set forth in paragraphs (a) to (d) of the definition of "Credit Event" above) or right of set-off by or of a Reference Entity or, as applicable, an Underlying Obligor and (iii) in the case of a Qualifying Guarantee other than a Qualifying Affiliate Guarantee, is capable, at the Valuation Date, of immediate assertion or demand by or on behalf of the holder or holders against the Reference Entity for an amount at least equal to the Quotation Amount apart from the giving of any notice of non-payment or similar procedural requirement, it being understood that acceleration of an Underlying Obligation shall not be considered a procedural requirement;

- (ii) each Benchmark Obligation specified in the applicable Final Terms; and
- (iii) any Substitute Benchmark Obligation,

as selected by the Calculation Agent in its sole and absolute discretion and notified to the Issuer (a "**Reference Obligation Notification**") on or prior to the relevant Valuation Date.

In each case the Reference Obligation Notification shall describe the selected Reference Obligation in reasonable detail and shall specify the title or designation, maturity date and coupon rate. The Calculation Agent may at any time after delivering a Reference Obligation Notification but prior to the Valuation Time on the Valuation Date deliver a further Reference Obligation Notification which shall replace all prior Reference Obligation Notifications in relation to any additional or replacement Reference Obligation specified therein.

For the avoidance of doubt the Calculation Agent shall be entitled to select any of the Reference Obligations for the purposes of calculating the Final Price irrespective of their market value and, Provided That the selected obligation(s) satisfy the Deliverable Obligation Category and Deliverable Obligation Characteristics on the date of selection, such obligation(s) may constitute the Reference Obligation for the purposes hereof notwithstanding that this is not the case subsequent to such date.

- (b) The definition of "Substitute Reference Obligation" in Credit Linked Condition 2 shall be amended so that each reference to "Substitute Reference Obligation" and "Reference Obligation" is replaced by reference to a "Substitute Benchmark Obligation" and a "Benchmark Obligation" respectively, Provided That once a Benchmark Obligation has been specified as a Reference Obligation the definition of "Substitute Reference Obligation" shall not apply with respect to such Benchmark Obligation.
- (c) Paragraph (B)(1)(a) of the definition of "Obligation" in Credit Linked Condition 2 shall be deleted and the following substituted therefor:

**"Not Subordinated"** means an obligation that is not Subordinated to (A) any unsubordinated Borrowed Money obligation of the Reference Entity or (B) the Benchmark Obligation. For purposes of determining whether an obligation satisfies the "Not Subordinated" Obligation Characteristic or Deliverable Obligation Characteristic, the ranking in priority of payment of each Benchmark Obligation shall be determined as of the later of (I) the Trade Date specified in the applicable Final Terms and (II) the date on which such Benchmark Obligation was issued or incurred and shall not reflect any change to such ranking in priority of payment after such later date;"

- (d) For purposes of the Credit Linked Conditions:
  - (i) each reference in the Credit Linked Conditions to "a Deliverable Obligation" and "the Deliverable Obligation" shall be deemed to be a reference to "a Reference Obligation" and "the Reference Obligation" respectively; and

- (ii) each reference in the Credit Linked Conditions to "a Delivery Date" and "the Delivery Date" shall be deemed to be a reference to the date of selection of the relevant Reference Obligation, except that the words "the Delivery Date or" shall be deleted in the definition of "Accreted Amount" Credit Linked Condition 2.
- (e) For the avoidance of doubt, if Credit Linked Condition 17 is specified as applicable in the applicable Final Terms Credit Linked Condition 5 is not applicable.

**18. Calculation Agent**

The determination by the Calculation Agent of any amount or of any state of affairs, circumstance, event or other matter, or the formation of any opinion or the exercise of any discretion required or permitted to be determined, formed or exercised by the Calculation Agent pursuant to the Credit Linked Conditions and related provisions shall (in the absence of manifest error) be final and binding on the Issuer, the Guarantor and the Holders and shall be without liability on the part of the Calculation Agent and without the Calculation Agent being obliged to consider the interests of the Issuer, the Guarantor or the Holders. In performing its duties pursuant to the Credit Linked Conditions, the Calculation Agent shall act in its sole and absolute discretion. Any delay, deferral or forbearance by the Calculation Agent in the performance or exercise of any of its obligations or its discretion under the Credit Linked Conditions including, without limitation, the giving of any notice by it to any person, shall not affect the validity or binding nature of any later performance or exercise of such obligation or discretion, and none of the Calculation Agent, the Issuer and the Guarantor shall, in the absence of wilful misconduct and gross negligence, bear any liability in respect of, or consequent upon, any such delay, deferral or forbearance.

**19. Adherence to ISDA Protocols in Relation to Alternative Settlement or Valuation Method**

In the event that a protocol setting out an alternative settlement or valuation method is published by the International Swaps and Derivatives Association (a "Protocol") in relation to a Reference Entity, the Calculation Agent may in its sole discretion determine whether or not to follow some or all of the terms of such Protocol for purposes of the Credit Linked Conditions and related provisions.

Notwithstanding any other provisions in the Credit Linked Conditions and related provisions, in the event that the Calculation Agent decides to adhere to a Protocol, the Calculation Agent may adjust such terms of the Credit Linked Conditions and related provisions as it deems appropriate to reflect some or all of the relevant settlement, valuation and other provisions of the Protocol. These may include, without limitation, Final Price or Entitlement or determining that Cash Settlement rather than Physical Settlement shall apply or vice versa. Nothing in this Credit Linked Condition 19 should be taken as requiring the Calculation Agent to follow the terms of the Protocol.



## ANNEX 10

### ADDITIONAL TERMS AND CONDITIONS FOR PHYSICAL DELIVERY NOTES

#### 1. Interpretation

The following provisions (the "**Physical Delivery Note Conditions**") apply to Notes specified as being Physical Delivery Notes in the applicable Final Terms or where Physical Delivery is specified in the applicable Final Terms.

References in the Physical Delivery Note Conditions to "delivery", "delivered" and "deliver" shall in the context of the delivery of the Entitlement in respect of Credit Linked Notes be deemed to be references to "Delivery", "Delivered" and "Deliver" as such terms are defined and construed in the Credit Linked Conditions.

#### 2. Delivery of Entitlement and Asset Transfer Notices

In order to obtain delivery of the Entitlement(s) in respect of any Note:

- (i) if such Note is represented by a Global Note, the relevant Holder must deliver to Euroclear or Clearstream, Luxembourg (as applicable), with a copy to the Principal Paying Agent and the Issuer not later than the close of business in each place of reception on the Cut-Off Date, a duly completed Asset Transfer Notice substantially in the form set out in the Agency Agreement (the "**Asset Transfer Notice**"); and
- (ii) if such Note is in definitive form, the relevant Holder must deliver to any Paying Agent, with a copy to the Principal Paying Agent and the Issuer not later than the close of business in each place of reception on the Cut-Off Date, a duly completed Asset Transfer Notice.

Forms of the Asset Transfer Notice may be obtained during normal business hours from the specified office of any Security Agent.

An Asset Transfer Notice may only be delivered (i) if such Note is represented by a Global Note, in such manner as is acceptable to Euroclear or Clearstream, Luxembourg, as the case may be or (ii) if such Note is in definitive form in writing.

If such Note is in definitive form, such Note must be delivered together with the duly completed Asset Transfer Notice.

The Issuer shall at the risk of the relevant Holder deliver the Entitlement in respect of each Note or, in the case of Credit Linked Notes, Deliver the Deliverable Obligations comprising the Entitlement in such commercially reasonable manner as the Issuer shall, in its sole discretion, determine to be appropriate for such delivery.

All expenses including any applicable depositary charges, transaction or exercise charges, stamp duty, stamp duty reserve tax, issue, registration, securities, transfer and/or other taxes or duties (together "**Expenses**") arising from the redemption of the Notes and the delivery of any Entitlement shall be for the account of the relevant Holder and no delivery and/or transfer of any Entitlement shall be made until all Expenses have been paid to the satisfaction of the Issuer by the relevant Holder.

An Asset Transfer Notice must:

- (i) specify the name, address and contact telephone number of the relevant Holder and the person from whom the Issuer may obtain details for the delivery of the Entitlement if such delivery is to be made otherwise than in the manner specified in the applicable Final Terms;
- (ii) in the case of Notes represented by a Global Note, specify the nominal amount of Notes which are the subject of such notice and the number of the Holder's account at Euroclear or Clearstream, Luxembourg, as the case may be, to be debited with such Notes and irrevocably instruct and authorise Euroclear or Clearstream, Luxembourg, as the case may be, to debit the relevant Holder's account with such Notes on or before the Maturity Delivery Date (as defined below) or, in the case of Credit Linked Notes, the Credit Settlement Date;

- (iii) include an undertaking to pay all Expenses and, in the case of Notes represented by a Global Note, an authority to debit a specified account of the Holder at Euroclear or Clearstream, Luxembourg, as the case may be, in respect thereof and to pay such Expenses;
- (iv) include such details as are required by the applicable Final Terms for delivery of the Entitlement which may include account details and/or the name and address of any person(s) into whose name evidence of the Entitlement is to be registered and/or any bank, broker or agent to whom documents evidencing the Entitlement are to be delivered and specify the name and number of the Holder's account to be credited with any cash payable by the Issuer, in respect of any cash amount constituting the Entitlement or any dividends relating to the Entitlement, as a result of the occurrence of a Settlement Disruption Event or a Failure to Deliver due to Illiquidity and the Issuer electing to pay the Disruption Cash Settlement Price or Failure to Deliver Settlement Price, as applicable, or in respect of any Partial Cash Settlement Amounts;
- (v) certify that the beneficial owner of each Note is not a U.S. person (as defined in the Asset Transfer Notice), the Note is not being redeemed within the United States or on behalf of a U.S. person and no cash, securities or other property have been or will be delivered within the United States or to, or for the account or benefit of, a U.S. person in connection with any redemption thereof; and
- (vi) authorise the production of such notice in any applicable administrative or legal proceedings.

No Asset Transfer Notice may be withdrawn after receipt thereof by Euroclear, Clearstream, Luxembourg or a Paying Agent as provided above. After delivery of an Asset Transfer Notice, the relevant Holder may not transfer the Notes which are the subject of such notice.

In the case of Notes represented by a Global Note, upon receipt of such notice, Euroclear or Clearstream, Luxembourg, as the case may be, shall verify that the person specified therein as the Holder is the holder of the specified nominal amount of Notes according to its books.

Subject thereto, Euroclear or Clearstream, Luxembourg, as the case may be, will confirm to the Principal Paying Agent the series number and number of Notes the subject of such notice, the relevant account details (if applicable) and the details for the delivery of the Entitlement in respect of each such Note. Upon receipt of such confirmation, the Principal Paying Agent will inform the Issuer thereof. Euroclear or Clearstream, Luxembourg, as the case may be, will on or before the Maturity Delivery Date or Credit Settlement Date, as the case may be, debit the securities account of the relevant Holder with the Notes the subject of the relevant Asset Transfer Notice.

Failure properly to complete and deliver an Asset Transfer Notice may result in such notice being treated as null and void. Any determination as to whether such notice has been properly completed and delivered as provided in the Physical Delivery Note Conditions shall be made, in the case of Notes represented by a Global Note, by Euroclear or Clearstream, Luxembourg, as the case may be, after consultation with the Principal Paying Agent and the Issuer and shall be conclusive and binding on the Issuer, the Guarantor and the relevant Holder or in the case of Notes in definitive form, by the relevant Paying Agent after consultation with the Principal Paying Agent and the Issuer and shall be conclusive and binding on the Issuer, the Guarantor and the relevant Holder.

If such Asset Transfer Notice is subsequently corrected to the satisfaction of Euroclear or Clearstream, Luxembourg, as the case may be, or the relevant Paying Agent, in each case in consultation with the Principal Paying Agent and the Issuer, it shall be deemed to be a new Asset Transfer Notice submitted at the time such correction was delivered as provided above.

Euroclear, Clearstream, Luxembourg or the relevant Paying Agent, as applicable, shall use its best efforts promptly to notify the Holder submitting an Asset Transfer Notice if, in consultation with the Principal Paying Agent and the Issuer, it has determined that such Asset Transfer Notice is incomplete or not in proper form. In the absence of negligence or wilful misconduct on its part, none of the Issuer, the Guarantor, the Paying Agents, Euroclear, Clearstream, Luxembourg or the Principal Paying Agent shall be liable to any person with respect to any action taken or omitted to be

taken by it in connection with such determination or the notification of such determination to a Holder.

The Entitlement will be delivered at the risk of the relevant Holder, in the manner provided above on the Maturity Date (such date, subject to adjustment in accordance with these Physical Delivery Note Conditions, the "**Maturity Delivery Date**") or, in the case of Credit Linked Notes, in the manner provided above on the Credit Settlement Date, provided that the Asset Transfer Notice is duly delivered to Euroclear, Clearstream, Luxembourg or a Paying Agent, as the case may be, with a copy to the Principal Paying Agent and the Issuer, as provided above, not later than the close of business in each place of receipt on the Cut-Off Date.

If an Asset Transfer Notice is delivered to Euroclear, Clearstream, Luxembourg or a Paying Agent, as the case may be, with a copy to the Principal Paying Agent and the Issuer, later than the close of business in each place of receipt on the Cut-Off Date, then the Entitlement will be delivered as soon as practicable after the Maturity Date (in which case, such date of delivery shall be the Maturity Delivery Date) or, in the case of Credit Linked Notes, the Credit Settlement Date at the risk of such Holder in the manner provided above. Provided That if in respect of a Note an Asset Transfer Notice is not delivered to Euroclear, Clearstream, Luxembourg or a Paying Agent, as the case may be, with a copy to the Principal Paying Agent and the Issuer, later than the close of business in each place of receipt on the 90th calendar day following the Cut-off Date the Issuer's obligations in respect of such Note and the Guarantor's obligations in respect of the Guarantee in respect of such Note shall be discharged and no further liability in respect thereof shall attach to the Issuer or the Guarantor. For the avoidance of doubt, in such circumstances such Holder shall not be entitled to any payment, whether of interest or otherwise, as a result of such Maturity Delivery Date or the Credit Settlement Date, as the case may be, falling after the originally designated Maturity Delivery Date or Credit Settlement Date, as the case may be, and no liability in respect thereof shall attach to the Issuer or the Guarantor.

Delivery of the Entitlement in respect of the Notes is subject to all applicable laws, regulations and practices in force on the Maturity Delivery Date or the Credit Settlement Date, as the case may be, and none of the Issuer, the Guarantor or any of its Affiliates or agents and the Paying Agents shall incur any liability whatsoever if it is unable to effect the transactions contemplated, after using all reasonable efforts, as a result of any such laws, regulations or practices. None of the Issuer, the Guarantor or any of its Affiliates or agents and the Paying Agents shall under any circumstances be liable for any acts or defaults of Euroclear or Clearstream, Luxembourg in relation to the performance of their duties in relation to the Notes.

For such period of time after the Maturity Delivery Date or Credit Settlement Date, as the case may be, as any person other than the relevant Holder shall continue to be the legal owner of the securities, obligations or Deliverable Obligations comprising the Entitlement (the "**Intervening Period**"), none of the Issuer, the Guarantor nor any other such person shall (i) be under any obligation to deliver or procure delivery to the relevant Holder or any subsequent beneficial owner of such Note any letter, certificate, notice, circular or any other document or, except as provided herein, payment whatsoever received by that person in respect of such securities, obligations or Deliverable Obligations, (ii) be under any obligation to exercise or procure exercise of any or all rights (including voting rights) attaching to such securities, obligations or Deliverable Obligations during the Intervening Period or (iii) be under any liability to the relevant Holder, or any subsequent beneficial owner of such Note in respect of any loss or damage which the relevant Holder, or subsequent beneficial owner may sustain or suffer as a result, whether directly or indirectly, of that person being the legal owner of such securities, obligations or Deliverable Obligations during such Intervening Period.

Where the Entitlement comprises shares, any dividend or other distribution in respect of such Entitlement will be payable to the party that would receive such dividend or other distribution according to market practice for a sale of the Share executed on the Maturity Delivery Date and to be delivered in the same manner as the Entitlement. Any such dividend or other distribution to be paid to a Holder shall be paid to the account specified in the relevant Asset Transfer Notice.

Except in the case of Credit Linked Notes, where the Entitlement is, in the determination of the Issuer, an amount other than an amount of Relevant Assets capable of being delivered, the Holders will receive an Entitlement comprising of the nearest number (rounded down) of Relevant Assets capable of being delivered by the Issuer (taking into account that a Holder's entire holding may be aggregated at the Issuer's discretion for the purpose of delivering the Entitlements), and in respect of the amount of Relevant Assets not capable of being delivered, an amount in the Specified Currency which shall be the value of the amount of the Relevant Assets so rounded down, as calculated by the Calculation Agent in its sole discretion from such source(s) as it may select (converted if necessary into the Specified Currency by reference to such exchange rate as the Calculation Agent deems appropriate).

### 3. **Settlement Disruption Event**

The provisions of this Physical Delivery Note Condition 3 shall apply to Physical Delivery Notes other than Credit Linked Notes.

If, prior to the delivery of the Entitlement in accordance with these Physical Delivery Note Conditions, a Settlement Disruption Event is subsisting, then the Maturity Delivery Date in respect of such Note shall be postponed until the next Settlement Business Day on which no Settlement Disruption Event is subsisting and notice thereof shall be given to the relevant Holder, in accordance with Note Condition 13. Such Holder shall not be entitled to any payment, whether of interest or otherwise, on such Note as a result of any delay in the delivery of the Entitlement pursuant to these Physical Delivery Note Conditions. Where delivery of the Entitlement has been postponed as provided in the Physical Delivery Note Conditions the Issuer shall not be in breach of these Conditions and no liability in respect thereof shall attach to the Issuer or the Guarantor.

For so long as delivery of the Entitlement in respect of any Note is not practicable by reason of a Settlement Disruption Event, then in lieu of physical settlement and notwithstanding any other provision hereof, the Issuer may elect in its sole discretion to satisfy its obligations in respect of the relevant Note by payment to the relevant Holder of the Disruption Cash Settlement Price not later than on the third Business Day following the date that the notice of such election (the "**Election Notice**") is given to the Holders in accordance with Note Condition 13.

### 4. **Failure to Deliver due to Illiquidity**

The provisions of this Physical Delivery Note Condition 4 shall apply to Physical Delivery Notes other than Credit Linked Notes.

If Failure to Deliver due to Illiquidity is specified as applying in the applicable Final Terms and, in the opinion of the Calculation Agent, it is impossible or impracticable to deliver, when due, some or all of the Relevant Assets comprising the Entitlement (the "**Affected Relevant Assets**"), where such failure to deliver is due to illiquidity in the market for the Relevant Assets (a "**Failure to Deliver due to Illiquidity**"), then:

- (i) subject as provided elsewhere in the Physical Delivery Note Conditions and/or the applicable Final Terms, any Relevant Assets which are not Affected Relevant Assets, will be delivered on the originally designated Maturity Delivery Date in accordance with the Physical Delivery Note Conditions; and
- (ii) in respect of any Affected Relevant Assets, notwithstanding any other provision hereof, the Issuer may elect in its sole discretion, in lieu of delivery of the Affected Relevant Assets, to pay to the relevant Holder the Failure to Deliver Settlement Price (as defined below) on the fifth Business Day following the date the Failure to Deliver Notice (as defined below) is given to the Holders in accordance with Note Condition 13. The Issuer shall give notice (such notice a "**Failure to Deliver Notice**") as soon as reasonably practicable to the Holders in accordance with Note Condition 13 that the provisions of this Physical Delivery Note Condition 5 apply.

**5. Option to Vary Settlement**

The provisions of this Physical Delivery Note Condition 5 shall apply to Physical Delivery Notes other than Credit Linked Notes.

If the applicable Final Terms indicate that the Issuer has an option to vary settlement in respect of the Notes, the Issuer may at its sole and unfettered discretion in respect of each such Note, elect not to pay the relevant Holders the Final Redemption Amount or to deliver or procure delivery of the Entitlement to the relevant Holders, as the case may be, but, in lieu thereof to deliver or procure delivery of the Entitlement or make payment of the Final Redemption Amount on the Maturity Date to the relevant Holders, as the case may be. Notification of such election will be given to Holders in accordance with Condition 13.

**6. Additional Provisions for Credit Linked Notes**

The provisions of this Physical Delivery Note Condition 7 shall apply to Credit Linked Notes.

In relation to each Deliverable Obligation constituting the Entitlement the Issuer or the Guarantor, as applicable, will Deliver or procure the Delivery of the relevant Deliverable Obligation as provided in Physical Delivery Note Condition 3 on the Credit Settlement Date, Provided That if all or some of the Deliverable Obligations included in the Entitlement are Undeliverable Obligations and/or Hedge Disruption Obligations, then the Issuer shall continue to attempt to Deliver all or a portion of such Undeliverable Obligations or Hedge Disruption Obligations, as the case may be, on or before the 30th Business Day following the Credit Settlement Date (the "**Final Delivery Date**"), Provided Further That if all or a portion of such Undeliverable Options or Hedge Disruption Obligations, as the case may be, are not Delivered by the Final Delivery Date the provisions of Credit Linked Condition 10 shall apply.

**7. Definitions**

For the purposes of these Physical Delivery Note Conditions:

**"Disruption Cash Settlement Price"** means, in respect of each nominal amount of Notes equal to the Calculation Amount, an amount equal to the fair market value of such Notes (but not taking into account any interest accrued on such Note and paid pursuant to Note Condition 4 and Note Condition 5) on such day as shall be selected by the Issuer in its sole and absolute discretion provided that such day is not more than 15 days before the date that the Election Notice is given as provided above less the cost to the Issuer and/or its Affiliates or agents of the Issuer of unwinding or adjusting any underlying or related hedging arrangements (including the cost of funding in respect of such hedging arrangements), all as calculated by the Calculation Agent in its sole and absolute discretion.

**"Failure to Deliver Settlement Price"** means, in respect of each nominal amount of the Notes equal to the Calculation Amount, the fair market value of the Affected Relevant Assets in respect of such Notes on the fifth Business Day prior to the date on which the Failure to Deliver Notice is given as provided above, less the cost to the Issuer and/or its Affiliates or agents of unwinding or adjusting any underlying or related hedging arrangements (including the cost of funding in respect of such hedging arrangements), all as calculated by the Calculation Agent in its sole and absolute discretion.

**"Settlement Disruption Event"** means an event beyond the control of the Issuer or, if applicable, the Guarantor, as a result of which, in the opinion of the Calculation Agent or, if applicable, the Guarantor, delivery of the Entitlement by or on behalf of the Issuer or the Guarantor, as the case may be, in accordance with the Physical Delivery Note Conditions and/or the applicable Final Terms is not practicable.

## ANNEX 11

### ADDITIONAL TERMS AND CONDITIONS FOR RULE 144A WARRANTS

#### 1. Interpretation

If specified as applicable in the applicable Final Terms, the terms and conditions applicable to Warrants represented by a Rule 144A Global Warrant or a Regulation S/Rule 144A Global Warrant shall comprise the terms and conditions of the W&C Securities (the "**W&C Securities Conditions**") and the Additional Terms and Conditions for Rule 144A Warrants set out below (the "**Rule 144A Warrant Conditions**") in each case subject to completion and/or amendment in the applicable Final Terms. In the event of any inconsistency between the W&C Securities Conditions and the Rule 144A Warrant Conditions, the Rule 144A Warrant Conditions shall prevail. In the event of any inconsistency between (i) the W&C Securities Conditions, and/or the Rule 144A Warrant Conditions and (ii) the applicable Final Terms, the applicable Final Terms shall prevail.

#### 2. Form

If the applicable Final Terms specify that the Warrants are eligible for sale exclusively in the United States or to, or for the account or benefit of, U.S. persons pursuant to an exemption from the registration requirements of the Securities Act of 1933, as amended (the "**Securities Act**"), the Warrants sold (a) in the United States to qualified institutional buyers ("**QIBs**") within the meaning of Rule 144A ("**Rule 144A**") under the Securities Act who are also each a qualified purchaser (each a "**QP**") within the meaning of Section 3(c)(7) and as defined in Section 2(a)(51) of the United States Investment Company Act of 1940, as amended (the "**1940 Act**") and the rules thereunder or (b) to, or for the account or benefit of, U.S. persons who are QIBs and also QPs will be represented by a Rule 144A Global Warrant (the "**Rule 144A Global Warrant**"). Beneficial interests in a Rule 144A Global Warrant held through DTC (as defined below) must be held through an account with a direct participant in DTC that has been expressly authorised by the Issuer to hold such interests (an "**Authorised Custodian**") and each Authorised Custodian must have executed and delivered a Custodian Letter (as defined below) pursuant to which it will have agreed with the Issuer not to transfer any portion of a beneficial owner's interests in the Rule 144A Global Warrant to the account of any other person at the relevant Authorised Custodian, or to the account of any other participant in DTC or otherwise, without the prior written consent of the Issuer or the prior written consent of a person authorised to act on the Issuer's behalf. If specified in the applicable Final Terms, the Warrants may be sold (a) in the United States to QIBs who are also QPs who have executed and delivered an Investor Representation Letter (as defined below) or (b) to, or for the account or benefit of, U.S. persons who are QIBs and also QPs who have executed and delivered an Investor Representation Letter (as defined below) and, in either case, concurrently outside the United States to non-U.S. persons and will be represented by a Regulation S/Rule 144A Global Warrant (the "**Regulation S/Rule 144A Global Warrant**"), which will be deposited with a depository common to Euroclear and Clearstream, Luxembourg. A Rule 144A Global Warrant and a Regulation S/Rule 144A Global Warrant will only be issued in relation to Cash Settled W&C Securities which are either Index Linked Warrants or Share Linked Warrants.

Each Rule 144A Global Warrant will be either (a) deposited with the New York Warrant Agent as custodian for, and registered in the name of a nominee of, The Depository Trust Company ("**DTC**") and references herein to Warrants "held through" DTC will be deemed to be references to Warrants so represented, or (b) deposited with a Common Depository common to Euroclear and Clearstream, Luxembourg, as specified in the applicable Final Terms.

In the case of Warrants represented by a Rule 144A Global Warrant held through DTC, if DTC notifies the Issuer that it is unwilling or unable to continue as a depository for that Rule 144A Global Warrant held through DTC, or if at any time DTC ceases to be a "clearing agency" registered under the U.S. Securities Exchange Act of 1934, as amended, and a successor depository is not appointed by the Issuer within 90 days of such notice, the Issuer will deliver Warrants in definitive registered form ("**Definitive Warrants**") (bearing such legends as may be required by the Issuer) in exchange for that Rule 144A Global Warrant. Except in these circumstances, owners of beneficial interests in

a Rule 144A Global Warrant held through DTC will not be entitled to have any portion of such Warrants registered in their name and will not receive or be entitled to receive physical delivery of Definitive Warrants in exchange for their interests in that Rule 144A Global Warrant. Transfer, exercise, settlement and other mechanics related to any Definitive Warrants in exchange for Warrants represented by a Rule 144A Global Warrant held through DTC shall be as agreed between the Issuer and the New York Warrant Agent.

Except as specified herein, Definitive Warrants will not be issued.

For the purposes of the Terms and Conditions of W&C Securities as amended and/or supplemented by the Rule 144A Warrant Conditions, except as provided in the Rule 144A Warrant Conditions, Warrants represented by a Regulation S/Rule 144A Global Warrant or a Rule 144A Global Warrant deposited with a Common Depository for Euroclear and Clearstream, Luxembourg shall be deemed to be Warrants represented by a Permanent Global Warrant held by a Common Depository for the Clearing Systems.

### 3. Definitions

For the purposes of these Rule 144A Warrant Conditions:

**"Brussels Business Day"** means a day (other than Saturday or Sunday) on which commercial banks are open for general business in Brussels.

**"Clearing System"** means Euroclear and/or Clearstream, Luxembourg.

**"Global Warrant"** means a Rule 144A Global Warrant or Regulation S/Rule 144A Global Warrant.

**"Luxembourg Business Day"** means a day (other than Saturday or Sunday) on which commercial banks are open for general business in Luxembourg.

**"New York Business Day"** means a day (other than Saturday or Sunday) on which commercial banks are open for general business in New York City.

### 4. Title

In the case of Warrants represented by a Rule 144A Global Warrant held through DTC, the Rule 144A Global Warrant will be registered in the name of Cede & Co., as nominee of DTC but does not confer any rights or benefits on Cede & Co. or any other holder and is only enforceable by the Holders as provided therein. Any Rule 144A Global Warrant held through DTC will be held by the New York Warrant Agent as custodian for DTC. Subject as set forth in Rule 144A Warrant Condition 4, each person who is for the time being shown in the records of DTC as the holder of a particular number of such Warrants shall be treated by the Issuer, the Guarantor and any Security Agent as the holder of such number of such Warrants for all purposes (and the expressions "Holder" and "holder of Warrants" and related expressions shall be construed accordingly).

For so long as the Warrants are represented by a Regulation S/Rule 144A Global Warrant or a Rule 144A Global Warrant held through Euroclear and/or Clearstream, Luxembourg, each person who is for the time being shown in the records of a Clearing System as the holder of a particular number of Warrants (in which regard any certificate or other document issued by such Clearing System as to the number of Warrants standing to the account of any person shall be conclusive and binding for all purposes save in the case of manifest error) shall be treated by the Issuer, the Guarantor and any relevant Security Agent as the holder of such number of Warrants for all purposes (and the expressions "Holder" and "holder of Warrants" and related expressions shall be construed accordingly).

### 5. Transfers

All transactions (which transactions shall include transfers of Warrants represented by a Rule 144A Global Warrant, and transfers of Warrants represented by the same or another Global Warrant) (a) to a person in the United States or (b) to, or for the account or benefit of, a U.S. person who is a QIB and also a QP, in either case, who takes delivery of Warrants represented by a Rule 144A Global Warrant in the open market or otherwise in respect of Warrants represented by a Rule 144A Global

Warrant may only be effected to or through the Issuer. In addition, all transactions (which transactions shall include transfers represented by a Regulation S/Rule 144A Global Warrant, and transfers of Warrants represented by the same or another Global Warrant) (a) in the United States or (b) to, or for the account or benefit of, a U.S. person who is a QIB and also a QP, in either case, in the open market or otherwise in respect of Warrants represented by a Regulation S /Rule 144A Global Warrant may only be effected to or through the Issuer.

For so long as the Warrants are represented by a Rule 144A Global Warrant held through DTC, all permitted transfers of such Warrants must be effected through a direct or indirect participant of DTC and all such Warrants must be held through an Authorised Custodian. Title will pass upon registration of the transfer in the books of DTC. Transfers of a Rule 144A Global Warrant held by a nominee for DTC shall be limited to transfers of such Rule 144A Global Warrant, in whole but not in part, to another nominee of DTC or to a successor of DTC or such successor's nominee.

For so long as the Warrants are represented by a Regulation S/Rule 144A Global Warrant or a Rule 144A Global Warrant held through Euroclear or Clearstream, Luxembourg, all permitted transfers of such Warrants must be effected through an account at Euroclear or Clearstream, Luxembourg. Title will pass upon registration of the transfer in the books of Euroclear or Clearstream, Luxembourg, as the case may be.

Any reference herein to Euroclear and/or Clearstream, Luxembourg or DTC shall, whenever the context so permits, be deemed to include a reference to any additional or alternative clearing system approved by the Issuer and the Principal Warrant Agent, as the case may be, from time to time and notified to the Holders in accordance with Condition 10.

Subject as stated above, sales, transfers or exchanges of Warrants represented by a Global Warrant may only be made in accordance with the following provisions:

- (a) (i) (A) subject to the proviso set forth below, in the case of sales, transfers to or exchanges with a person who takes delivery in the form of Warrants represented by a Regulation S/Rule 144A Global Warrant upon certification (in the form available from any Security Agent) to the Principal Warrant Agent by the transferor (or, with respect to an exchange, the holder) thereof that such transfer or exchange, as the case may be, is being made to or through the Issuer (x) to a non-U.S. person in an offshore transaction pursuant to Regulation S under the Securities Act or (y) (a) in the United States to a QIB who is also a QP (a "QIB/QP") or (b) to, or for the account or benefit of, a U.S. person who is a QIB/QP, in either case, who has executed an Investor Representation Letter and who acquired such Warrants in a transaction meeting the requirements of Rule 144A together with delivery of a duly executed investment letter from the relevant transferee and, if required, a custodian letter from the relevant transferee's proposed DTC direct participant in the form of schedule 19 to the Agency Agreement (the "Custodian Letter") in accordance with paragraph (b) below; provided that the foregoing shall not apply to any transfers or exchanges between or among non-U.S. persons in offshore transactions pursuant to Regulation S under the Securities Act; or
- (B) in the case of transfers to or exchanges with a person who takes delivery in the form of Warrants represented by a Rule 144A Global Warrant, upon certification (in the form available from any Security Agent) to the Issuer by the transferor (or, with respect to an exchange, the holder) thereof that such transfer or exchange, as the case may be, is being made (a) in the United States to a QIB/QP who has executed an Investor Representation Letter or (b) to, or for the account or benefit of, a U.S. person who is a QIB/QP, in either case, who has executed an Investor Representations Letter and who acquired such Warrants in a transaction meeting the requirements of Rule 144A together with delivery of a duly executed investment letter from the relevant transferee and, if required, a Custodian Letter from the relevant



transferee's proposed DTC direct participant in accordance with paragraph (b) below; and

- (ii) in accordance with any applicable rules and regulations of the Principal Warrant Agent, New York Warrant Agent, DTC and each relevant Clearing System.

The Holder must send:

- (A) in the case of transfers or exchanges of Warrants represented by a Regulation S/Rule 144A Global Warrant or Rule 144A Global Warrant held through Euroclear and/or Clearstream, Luxembourg, to Euroclear and/or Clearstream, Luxembourg, as the case may be, a free of payment instruction not later than 10.00 a.m. (Brussels or Luxembourg time, as the case may be) one Brussels Business Day or Luxembourg Business Day, as the case may be, prior to the date on which the transfer or exchange is to take effect; and
- (B) in the case of transfers or exchanges of Warrants represented by a Rule 144A Global Warrant held through DTC, to DTC a free of payment instruction at least two New York Business Days prior to the date on which the transfer or exchange is to take effect.

In the case of a transfer, separate payment arrangements are required to be made between the transferor and the transferee.

On the transfer or exchange date Euroclear or Clearstream, Luxembourg, or DTC, as the case may be, will debit the account of its participant and will instruct (a), in the case of transfers to a person who takes delivery of Warrants represented by a Regulation S/Rule 144A Global Warrant or a Rule 144A Global Warrant held through Euroclear and/or Clearstream, Luxembourg, the Principal Warrant Agent to instruct Euroclear or Clearstream, Luxembourg, as the case may be, to credit the relevant account of the Euroclear or Clearstream, Luxembourg participant, as the case may be, or (b) in the case of transfers to a person who takes delivery of Warrants represented by a Rule 144A Global Warrant held through DTC, the New York Warrant Agent (in the case of transfers or exchanges of Warrants represented by a Rule 144A Global Warrant held through DTC) to credit the relevant account of the DTC participant.

- (b) In the case of sales or transfers of Warrants (i) to a person who takes delivery in the form of Warrants represented by a Rule 144A Global Warrant or (ii) (a) to a person in the United States or (b) to, or for the account or benefit of, a U.S. person who is a QIB/QP, in either case, who takes delivery in the form of Warrants represented by a Regulation S/Rule 144A Global Warrant (each of which transfers must be effected to or through the Issuer), the delivery of a duly executed investor representation letter in the form set out in the Agency Agreement (an "**Investor Representation Letter**") from the relevant transferee and the delivery of a Custodian Letter from the relevant transferee's DTC direct participant (to the extent that such DTC direct participant is not already an Authorised Custodian) is a condition precedent to the sale or transfer of such Warrants or any beneficial interests therein. The Investor Representation Letter must be duly executed by such proposed transferee or such proposed transferee's attorney duly authorised in writing, at least three New York Business Days prior to the date the transfer of such Warrants is desired. Any attempted transfer in which the Investor Representation Letter and the proposed transfer was not effected in accordance with the foregoing procedures shall not be valid or binding on the Issuer. In addition, if any Security Agent subsequently determines or is subsequently notified by the Issuer that (i) a transfer or attempted or purported transfer of any interest in a Warrant was consummated in compliance with the provisions of this paragraph on the basis of an incorrect form of certification from the transferee or purported transferee as set forth in the relevant Investor Representation Letter, (ii) the holder of any interest in a Warrant was in breach, at the time given, of any representation or agreement set forth in any Investor Representation Letter or any deemed representation or agreement of such holder, or (iii) a transfer or attempted transfer of any interest in a Warrant was consummated which did not comply with the transfer restrictions set forth in this Rule 144A Warrant Condition 5 the purported transfer shall be absolutely null and void *ab initio* and shall vest no rights in the purported transferee (such purported transferee, a "**Disqualified Transferee**") and the last preceding

holder of such interest that was not a Disqualified Transferee shall be restored to all rights as a holder thereof retroactively to the date of transfer of such interest by such holder.

## **6. Exercise Rights**

### **(A) American Style Warrants**

If Automatic Exercise is not specified in the applicable Final Terms, in the case of American Style Warrants represented by a Rule 144A Global Warrant held through DTC, any such American Style Warrants with respect to which no Exercise Notice has been delivered in the manner set out in Rule 144A Warrant Condition 7, at or prior to 5.00 p.m., New York City time, on the New York Business Day immediately preceding the Expiration Date, shall become void.

If Automatic Exercise is specified in the applicable Final Terms, in the case of American Style Warrants represented by a Rule 144A Global Warrant held through DTC, any such American Style Warrant with respect to which no Exercise Notice has been delivered in the manner set out in Rule 144A Warrant Condition 7, at or prior to 5.00 pm New York City time, on the New York Business Day immediately preceding the Expiration Date and which is in the determination of the Calculation Agent "In-The-Money" shall be automatically exercised on the Expiration Date and the provisions of Rule 144A Warrant Condition 8 shall apply.

In the case of American Style Warrants represented by a Rule 144A Global Warrant held through DTC, (a) the Exercise Business Day immediately succeeding the New York Business Day on which an Exercise Notice is received prior to 5.00 p.m., New York City time, by the New York Warrant Agent and a copy thereof is delivered to Merrill Lynch International and the Principal Warrant Agent, or (b), if Automatic Exercise is specified in the applicable Final Terms and the Warrants are automatically exercised on the Expiration Date as provided above, the Expiration Date, is referred to herein as the "Actual Exercise Date". If any such Exercise Notice is received by the New York Warrant Agent, or if a copy thereof is delivered to Merrill Lynch International and the Principal Warrant Agent, after 5.00 p.m. on any New York Business Day, such Exercise Notice will be deemed to have been given on the next New York Business Day and the Exercise Business Day immediately succeeding such next New York Business Day shall be deemed to be the Actual Exercise Date, provided that any such Warrants in respect of which no Exercise Notice has been delivered in the manner set out in Rule 144A Warrant Condition 7, at or prior to 5.00 p.m. New York City time, on the New York Business Day immediately preceding the Expiration Date shall (i) if Automatic Exercise is not specified in the applicable Final Terms, become void or (ii), if Automatic Exercise is specified in the applicable Final Terms, be automatically exercised on the Expiration Date as provided above.

### **(B) European Style Warrants**

In the case of European Style Warrants represented by a Rule 144A Global Warrant held through DTC, if Automatic Exercise is not specified in the applicable Final Terms, any European Style Warrant with respect to which no Exercise Notice has been delivered in the manner set out in Rule 144A Warrant Condition 7, at or prior to 5.00 p.m., New York City time on the New York Business Day immediately preceding the Actual Exercise Date, shall become void.

If Automatic Exercise is specified in the applicable Final Terms, any such European Style Warrant with respect to which no Exercise Notice has been delivered in the manner set out in Rule 144A Warrant Condition 7, at or prior to 5.00 p.m. New York City time on the New York Business Day immediately preceding the Actual Exercise Date and which is in the determination of the Calculation Agent "In-The-Money", shall be automatically exercised on the Actual Exercise Date and the provisions of Rule 144A Warrant Condition 8 shall apply.

The expressions "exercise", "due exercise" and related expressions shall be construed to apply to any Warrants which are automatically exercised on the Actual Exercise Date in accordance with this provision.

## **7. Exercise Procedure**

### **(A) Warrants represented by a Rule 144A Global Warrant held through DTC**

Warrants represented by a Rule 144A Global Warrant held through DTC may only be exercised by delivery through computerised exercise instruction through DTC (via its "Deposit and Withdrawal at Custodian" or "DWAC" function) of a duly completed Exercise Notice in the form set out in the Agency Agreement (copies of which form may be obtained from the Security Agents) to the New York Warrant Agent with a copy to the Principal Warrant Agent and Merrill Lynch International, in accordance with the provisions set out in Rule 144A Warrant Conditions 6 and 7.

In the case of Warrants represented by a Rule 144A Global Warrant held through DTC, the Exercise Notice shall:

- (i) specify the series of the Warrants and the number of Warrants being exercised and, if Units are specified in the applicable Final Terms, the number of Units being exercised;
- (ii) specify the designated account at the New York Warrant Agent (or such other account or bank as may be specified by the New York Warrant Agent) to be debited with the Warrants being exercised;
- (iii) irrevocably instruct the New York Warrant Agent to exercise the Warrants debited to the account of the Holder and credited to the account of the New York Warrant Agent by means of DTC's DWAC function;
- (iv) specify the designated account at the New York Warrant Agent (or at such other account or bank as may be specified by the New York Warrant Agent) to be credited with the Cash Settlement Amount (if any) for each Warrant being exercised;
- (v) include an undertaking to pay all Expenses and an authority to the New York Warrant Agent to deduct an amount in respect thereof from any Cash Settlement Amount due to such Holder and/or to debit a specified account of the Holder at the New York Warrant Agent (or at such other account or bank as may be specified by the New York Warrant Agent) in respect thereof and to pay such Expenses; and
- (vi) authorise the production of such certification in applicable administrative or legal proceedings,

all as provided in the Agency Agreement.

Upon receipt of an Exercise Notice, the New York Warrant Agent shall verify that the person exercising the Warrants is the holder thereof according to the records of DTC. Subject thereto, the New York Warrant Agent shall notify the Issuer of the number of Warrants being exercised and the account details, if applicable, for the payment of the Cash Settlement Amount of each Warrant being exercised. If the Warrants are American Style Warrants, upon exercise of less than all the Warrants held through DTC, the New York Warrant Agent will note such exercise on the Schedule to such Rule 144A Global Warrant and the number of Warrants so constituted shall be reduced by the cancellation *pro tanto* of the Warrants so exercised.

The Issuer, through the Principal Warrant Agent, shall on the Settlement Date pay or cause to be paid the Cash Settlement Amount (if any) for each duly exercised Warrant or Unit, as the case may be, to the designated account at the New York Warrant Agent (or at such other account or bank as may be specified by the New York Warrant Agent) for the account of the New York Warrant Agent. In such case, as promptly as practicable thereafter, and provided that the New York Warrant Agent is satisfied that delivery to it of funds sufficient to pay the Cash Settlement Amount will be made, the New York Warrant Agent will cause the Cash Settlement Amount to be credited to the Holder's account with the New York Warrant Agent less any Expenses.

Delivery of an Exercise Notice shall constitute an irrevocable election by the relevant Holder to exercise the Warrants specified. After the delivery of such Exercise Notice, such exercising Holder may not transfer such Warrants.

Any determination as to whether an Exercise Notice is duly completed and in proper form shall be made by the New York Warrant Agent in consultation with the Principal Warrant Agent in the case of Warrants represented by a Rule 144A Global Warrant held through DTC, and shall be conclusive and binding on the Issuer, the relevant Security Agents and the relevant Holder. Subject as set out below, any Exercise Notice so determined to be incomplete or not in proper form, or which is not copied to the Principal Warrant Agent and Merrill Lynch International immediately after being delivered or sent to the New York Warrant Agent shall be null and void.

If such Exercise Notice is subsequently corrected to the satisfaction of the New York Warrant Agent in consultation with the Principal Warrant Agent, it shall be deemed to be a new Exercise Notice submitted at the time such correction was delivered to the New York Warrant Agent and copied to the Principal Warrant Agent and Merrill Lynch International.

**If Automatic Exercise is not specified in the applicable Final Terms, any Warrants with respect to which the Exercise Notice has not been duly completed and delivered in the manner set out above by the cut-off time specified in Rule 144A Warrant Condition 6(A), in the case of American Style Warrants, or Rule 144A Warrant Condition 6(B), in the case of European Style Warrants, shall become void.**

The New York Warrant Agent shall use its best efforts promptly to notify the Holder submitting an Exercise Notice if, in consultation with the Principal Warrant Agent, it has determined that such Exercise Notice is incomplete or not in proper form. In the absence of negligence or wilful misconduct on its part, none of the Issuer, the Guarantor, the Security Agents or DTC, shall be liable to any person with respect to any action taken or omitted to be taken by it in connection with such determination or the notification of such determination to a Holder.

**(B) Warrants represented by a Regulation S/Rule 144A Global Warrant**

In respect of Warrants represented by a Regulation S/Rule 144A Global Warrant, the provisions of W&C Securities Condition 22(A)(a) in respect of Cash Settled Warrants shall apply except that sub-paragraph (vi) shall be amended by the addition of the following after the words "certify, *inter alia*", "either (i) that the beneficial owner of each Warrant being exercised is a QIB/QP (as defined in the Exercise Notice) and, where appropriate, undertake to provide such various forms of certification in respect of selling restrictions under the securities, commodities and other laws of the United States of America as set out in the applicable Final Terms, or (ii)".

**(C) Warrants represented by a Rule 144A Global Warrant held through Euroclear and/or Clearstream, Luxembourg**

In respect of Warrants represented by Rule 144A Global Warrant held through Euroclear and/or Clearstream, Luxembourg, the provisions of W&C Securities Condition 22(A)(a) in respect of Cash Settled Warrants shall apply except that sub-paragraph (vi) shall be deleted in its entirety.

**8. Automatic Exercise**

Automatic Exercise will apply to Warrants represented by a Rule 144A Global Warrant held through DTC.

In the case of Warrants represented by a Rule 144A Global Warrant held through DTC, in order to receive the Cash Settlement Amount, in respect of a Warrant, or if Units are specified in the applicable Final Terms, a Unit, as the case may be, the relevant Holder must deliver through computerised exercise instruction through DTC (via its DWAC function) a duly completed Exercise Notice to the New York Warrant Agent with a copy to Merrill Lynch International and the Principal Warrant Agent on any New York Business Day until not later than 5.00 p.m. New York City time, on the New York Business Day immediately preceding the Cut-off Date (as defined in W&C Securities Condition 22(E)).

The Exercise Notice shall include the applicable information set out in the Exercise Notice referred to in Rule 144A Warrant Condition 7. The Business Day during the period from the Expiration Date or the Actual Exercise Date, as the case may be, until the Cut-off Date on which an Exercise Notice

is delivered to the New York Warrant Agent and a copy thereof delivered to Merrill Lynch International and the Principal Warrant Agent is referred to in this Rule 144A Warrant Condition 8 as the "**Exercise Notice Delivery Date**", provided that if the Exercise Notice is delivered to the New York Warrant Agent at or after 5.00 p.m., New York City time on a New York Business Day the Exercise Notice Delivery Date shall be deemed to be the next succeeding New York Business Day.

Subject to the relevant Holder performing its obligations in respect of the relevant Warrant or Unit, as the case may be, in accordance with these Terms and Conditions, the Settlement Date for such Warrants or Units, as the case may be, shall be the fourth Business Day following the Exercise Notice Delivery Date. In the event that a Holder does not so deliver an Exercise Notice in accordance with this Rule 144A Warrant Condition 8 prior to 5.00 p.m., New York City time, on the New York Business Day immediately preceding the Cut-off Date, the Issuer's obligations in respect of such Rule 144A Warrants and the Guarantor's obligations in respect of the Guarantee shall be discharged and no further liability in respect thereof shall attach to the Issuer or the Guarantor.

**9. Purchases**

Warrants represented by a Rule 144A Global Warrant purchased by the Issuer pursuant to W&C Securities Condition 8 may only be resold pursuant to Rule 144A or Regulation S.

**10. Additional Amounts**

In respect of Warrants represented by a Rule 144A Global Warrant held through DTC, the provisions of W&C Securities Condition 23 (*Additional Amounts*) shall apply except that references therein to "relevant Clearing Systems" shall be replaced by "DTC".

**11. New York Warrant Agent**

The Issuer and the Guarantor reserve the right at any time to vary or terminate the appointment of the New York Warrant Agent and to appoint further or additional Security Agents as provided in W&C Securities Condition 9, provided that, so long as any of the Warrants are represented by a Rule 144A Global Warrant held through DTC, there shall be a New York Warrant Agent.

**12. Notices**

For so long as the Warrants are represented by a Rule 144A Global Warrant held through DTC, the reference in the first paragraph of W&C Securities Condition 10 to "each Clearing System" shall be replaced by "DTC".

**13. Substitution of the Issuer**

The Issuer, or any previous substituted company may, at any time, without the consent of the Holders, substitute for itself as principal obligor under Warrants represented by a Rule 144A Global Warrant or a Regulation S/Rule 144A Global Warrant any company, being ML&Co. or any of its other subsidiaries as provided in W&C Securities Condition 13, provided that the Substitute and the Warrants satisfy all the applicable requirements of Rule 144A.

## FORM OF GUARANTEE

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, MERRILL LYNCH & CO., INC., a corporation duly organized and existing under the laws of the State of Delaware ("ML&Co."), hereby unconditionally and irrevocably guarantees (the "Guarantee") to the holders (the "Holders") of Warrants and Certificates issued by Merrill Lynch International & Co. C.V., a Netherlands Antilles Limited Partnership ("MLICo."), and Notes and Certificates issued by Merrill Lynch S.A., a Luxembourg Limited Company ("MLSA" and, together with MLICo., the "Issuers" and each an "Issuer"), in each case under the terms of the Agency Agreement dated 16th September, 2008 (as the same may be amended, supplemented and/or restated in accordance with the terms thereof, the "Agency Agreement") among, ML&Co., MLICo., MLSA and the Agents (as defined therein):

- (i) the due and punctual payment by the relevant Issuer of any and all amounts payable by such Issuer as obligor in respect of each Security (as defined below); and/or
- (ii) subject as provided below, the due and punctual performance of any and all obligations of the relevant Issuer with respect to physical delivery of non-cash consideration deliverable by the relevant Issuer in respect of each Security, if applicable,

when and as the same shall become due and payable or when the same shall become due for performance, as the case may be, pursuant to the terms of the Securities.

Warrants and Certificates are herein referred to as "W&C Securities" and Notes and W&C Securities are herein referred to as "Securities".

Notwithstanding that under the terms of the Securities either (i) the relevant Issuer has the right (whether or not exercised) to vary the type of consideration due and payable or deliverable to a Holder or (ii) a Holder has the right (whether or not exercised) to vary the type of consideration due and payable or deliverable to it or (iii) the relevant Issuer is obligated to deliver non-cash consideration to Holders when the same shall become due and deliverable, ML&Co. shall at all times have the right, at its sole and unfettered discretion, to elect not to deliver or procure delivery of the Entitlement to the holders of such Securities when the same shall become due and deliverable, but in lieu thereof to pay an amount in cash equal to the Guaranteed Cash Settlement Amount (calculated pursuant to the terms of, or as specified in, the Final Terms or Securities Note, as applicable, prepared with respect to such Securities). Any payment of the Guaranteed Cash Settlement Amount in lieu of the Entitlement shall constitute a complete discharge of ML&Co.'s obligations in respect of such Securities.

Subject as provided above, in case of the failure of the relevant Issuer punctually to make any such payment or to perform any such delivery obligation, ML&Co. hereby agrees to make such payment or to perform such delivery obligation, as the case may be, or cause such payment to be made or to cause such delivery obligation to be performed, as the case may be, promptly upon demand; such demand must be made by the relevant Holder by the giving of written notice of such demand to ML&Co. at Merrill Lynch & Co. Inc., 4 World Financial Center, New York, N.Y. 10080, U.S.A. (Attention: Treasurer), with a copy sent to ML&Co. at 222 Broadway, 17th Floor, New York, N.Y. 10038, U.S.A. (Attention: OGC Corporate Law); provided however, that delay in making such demand shall in no event affect ML&Co.'s obligations under this Guarantee. This Guarantee shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment or delivery guaranteed hereunder, in whole or in part, is rescinded or must otherwise be returned by a Holder upon the insolvency, bankruptcy or reorganization of the relevant Issuer or otherwise, all as though such payment or delivery had not been made.

ML&Co. covenants in favour of each Holder who is a United States Alien or a Luxembourg Non-resident that it will duly perform and comply with the obligations expressed to be undertaken by it in Note Condition 7(A). In particular, if in respect of any payment to be made under this Guarantee, any deduction or withholding for or on account of any present or future tax, assessment or other governmental charge of whatever nature is imposed, ML&Co. shall pay the additional amounts referred to in Note Condition 7(A), all subject to and in accordance with the provisions of Note Condition 7.

ML&Co. hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of any Security; the absence of any action to enforce the same; any waiver or consent by the Holder concerning any provisions thereof; the rendering of any judgement against the relevant Issuer or any action to enforce the same; or any other circumstances that might otherwise constitute a legal or equitable discharge of a guarantor or a defense of a guarantor. ML&Co. covenants that, subject as provided below, this Guarantee will not be discharged except by complete payment of the amounts payable under each Security and/or the complete performance of any obligation with respect to physical delivery to be performed under each Security, as applicable. This Guarantee shall continue to be effective if the relevant Issuer merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist.

ML&Co. hereby waives diligence, presentment, protest, notice of protest, acceleration, dishonor, filing of claims with any court in the event of insolvency or bankruptcy of the relevant Issuer, all demands whatsoever, except as noted in the first paragraph hereof; and any right to require a proceeding first against the relevant Issuer.

ML&Co. hereby represents and warrants that this Guarantee constitutes the valid and binding obligation of ML&Co. and is enforceable in accordance with its terms.

The obligations of ML&Co. under this Guarantee, save for such exceptions as may be provided by application legislation or judicial order, rank *pari passu* with its other present and future unsecured and unsubordinated contractual indebtedness.

This Guarantee shall not be valid or become obligatory for any purpose with respect to any Security until (i) in the case of a Security other than a Swedish Dematerialised Security, the Global W&C Security, the Global Note, the definitive Certificate, the definitive Warrant or the definitive Note, as applicable, representing such Security shall have been authenticated as provided in the Agency Agreement or (ii) in the case of a Swedish Dematerialised Security, the issue of such Swedish Dematerialised Security has been duly registered in the book-entry system of the Swedish CSD.

Terms and expressions defined in the Agency Agreement and the applicable Conditions shall have the same meanings when used in this Guarantee, except where the context otherwise requires.

This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed in such State.

The Securities are governed by English law, and the Issuers have submitted to the exclusive jurisdiction of the English courts for the purposes of determining any legal action or proceedings relating thereto. The Guarantor has not submitted to the jurisdiction of the English courts for any such purpose, and any legal action or proceeding arising out of or relating to this Guarantee shall be subject to the exclusive jurisdiction of the federal and state courts in the Borough of Manhattan in the City and State of New York.

IN WITNESS WHEREOF, ML&Co. has caused this Guarantee to be executed in its corporate name by its duly authorized representative on 16th September, 2008.

MERRILL LYNCH & CO., INC.

By:

## BOOK-ENTRY CLEARANCE SYSTEMS

*The information set out below is subject to any change in or reinterpretation of the rules, regulations and procedures of DTC, Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt or Euroclear France (together, the "Book-Entry Clearing Systems") currently in effect. Investors wishing to use the facilities of any of the Book-Entry Clearing Systems are advised to confirm the continued applicability of the rules, regulations and procedures of the relevant Book Entry Clearing System. Neither the relevant Issuer nor any agent party to the Agency Agreement will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests in the Securities held through the facilities of any Book-Entry Clearing System or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.*

### Book-entry Systems

#### DTC

DTC has advised MLICo. that it is a limited-purpose trust company organised under the New York Banking Law, a "banking organisation" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Exchange Act. DTC holds and provides asset servicing for over two million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments from over 85 countries that DTC's participants ("**Direct Participants**") deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants' accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation ("**DTCC**"). DTCC, in turn, is owned by a number of Direct Participants and Members of the National Securities Clearing Corporation, Fixed Income Clearing Corporation and Emerging Markets Clearing Corporation (also subsidiaries of DTCC), as well as by the New York Stock Exchange, Inc., the American Stock Exchange LLC and the National Association of Securities Dealers, Inc. Access to the depository system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly ("**Indirect Participants**"). The rules applicable to Direct Participants are on file with the U.S. Securities and Exchange Commission. More information about DTC can be found at its internet web site at <http://www.dtcc.com>.

Under the rules, regulations and procedures creating and affecting DTC and its operations (the "**Rules**"), DTC makes book-entry transfers of Rule 144A Global Warrants held through DTC among Direct Participants on whose behalf it acts with respect to Warrants accepted into DTC's book-entry settlement system ("**DTC Warrants**") as described below and receives and transmits payments on DTC Warrants. Direct Participants and Indirect Participants with which beneficial owners of DTC Warrants ("**Beneficial Owners**") have accounts with respect to the DTC Warrants similarly are required to make book-entry transfers and receive and transmit such payments on behalf of their respective Beneficial Owners. Accordingly, although Owners who hold DTC Warrants through Direct Participants or Indirect Participants will not possess definitive Warrants, the Rules, by virtue of the requirements described above, provide a mechanism by which Direct Participants will receive payments and will be able to transfer their interest in respect to the DTC Warrants.

Purchases of DTC Warrants under the DTC system must be made by or through Direct Participants, which will receive a credit for the DTC Warrants on DTC's records. The ownership interest of each actual purchaser of each DTC Warrants being a Beneficial Owner, is in turn to be recorded on the Direct and Indirect Participant's records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the DTC Warrants are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial



**Owners.** Beneficial Owners will not receive certificates representing their ownership interests in DTC Warrants, except in the event that use of the book-entry system for the DTC Warrants is discontinued.

To facilitate subsequent transfers, all DTC Warrants deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or any other nominee as may be requested by an authorised representative of DTC. The deposit of DTC Warrants with DTC and their registration in the name of Cede & Co. or any other nominee effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the DTC Warrants; and DTC's records reflect only the identity of the Direct Participants to whose accounts such DTC Warrants are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers. Subsequent transfers of the Warrants, however, may only be made to persons that hold their Warrants through DTC Direct Participants that have executed and delivered to the Issuer a Custodian Letter in a form approved by the Issuer and that have thereby become "Authorised Custodians" with respect to the Warrants.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Under certain circumstances DTC will exchange the DTC Warrants for Definitive Warrants, which it will distribute to its Participants in accordance with their proportionate entitlements. Since DTC may only act on behalf of Direct Participants, who in turn act on behalf of Indirect Participants, any Beneficial Owner desiring to pledge DTC Warrants to persons or entities that do not participate in DTC, or otherwise take actions with respect to such DTC Securities, may be limited in its ability to effect such a pledge.

#### *Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt and Euroclear France*

Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt and Euroclear France each hold securities for their customers and facilitate the clearance and settlement of securities transactions by electronic book-entry transfer between their respective account holders. Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt and Euroclear France provide various services including safekeeping, administration, clearance and settlement of internationally traded securities and securities lending and borrowing. Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt and Euroclear France also deal with domestic securities markets in several countries through established depository and custodial relationships. Euroclear and Clearstream, Luxembourg have established an electronic bridge between their two systems across which their respective participants may settle trades with each other.

Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt and Euroclear France customers are world-wide financial institutions, including underwriters, securities brokers and dealers, banks, trust companies and clearing corporations. Indirect access to Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt and Euroclear France is available to other institutions that clear through or maintain a custodial relationship with an account holder of either system.

The address of Euroclear is Euroclear Bank SA/NV, 1 Boulevard du Roi Albert II, B-1210 Brussels, the address of Clearstream, Luxembourg is Clearstream Banking, 42 Avenue JF Kennedy, L-1855, Luxembourg, the address of Clearstream, Frankfurt is Neue Börsenstrasse 1, 60487 Frankfurt am Main, Germany and the address of Euroclear France is 115 rue Réaumur, 75081 Paris Cedex 02, France.

#### **Book-entry Ownership of and Payments in respect of DTC Warrants**

If a Rule 144A Global Warrant is to be registered in the name of a nominee of DTC, the Issuer will apply to DTC in order to have the Warrants represented by such Rule 144A Global Warrant accepted in its book-entry settlement system. Upon the issue of any Rule 144A Global Warrant to be held through DTC, DTC or its custodian will credit, on its internal book-entry system, the respective nominal amounts of the individual beneficial interests represented by such Rule 144A Global Warrant to the accounts of persons who have accounts with DTC, and who have signed and delivered to the Issuer a Custodian Letter in the form set out in schedule 19 to the Agency Agreement. Ownership of beneficial interests in any such Rule 144A Global Warrant will be limited to Direct Participants or Indirect Participants, including the respective depositories of

Euroclear and Clearstream, Luxembourg. Ownership of beneficial interests in any such Rule 144A Global Warrant held through DTC will be shown on, and the transfer of such ownership will be effected only through, records maintained by DTC or its nominee (with respect to the interests of Direct Participants) and the records of Direct Participants (with respect to interests of Indirect Participants).

Payments in U.S. dollars in respect of a Rule 144A Global Warrant registered in the name of DTC's nominee will be made to the order of such nominee as the registered holder of such Warrant. In the case of any payment in a currency other than U.S. dollars, payment will be made to the New York Warrant Agent on behalf of DTC's nominee and the New York Warrant Agent will (in accordance with instructions received by it) remit all or a portion of such payment for credit directly to the beneficial holders of interests in the Rule 144A Global Warrant held through DTC in the currency in which such payment was made and/or cause all or a portion of such payment to be converted into U.S. dollars and credited to the applicable Participants' account.

The Issuer expects DTC to credit accounts of Direct Participants on the applicable payment date in accordance with their respective holdings as shown in the records of DTC unless DTC has reason to believe that it will not receive payment on such payment date. The Issuer also expects that payments by Participants to Beneficial Owners of Warrants will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers, and will be the responsibility of such Participant and not the responsibility of DTC, the Principal Security Agent, the New York Warrant Agent or the Issuer. Payments on Warrants to DTC is the responsibility of the Issuer.

#### **Transfers of Securities Represented by Global Securities**

Transfers of any interests in Securities represented by a Global Warrant within DTC or a Global Security or Global Note within Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt and Euroclear France will be effected in accordance with the customary rules and operating procedures of the relevant clearing system. The laws in some States within the United States require that certain persons take physical delivery of securities in definitive form. Consequently, the ability to transfer Warrants represented by a Global Warrant to such persons may depend upon the ability to exchange such Warrants for Warrants in definitive form. Similarly, because DTC can only act on behalf of Direct Participants in the DTC system who in turn act on behalf of Indirect Participants, the ability of a person having an interest in Warrants represented by a Global Warrant to pledge such Warrants to persons or entities that do not participate in the DTC system or to otherwise take action in respect of such Warrants may depend upon the ability to exchange such Warrants for Warrants in definitive form. The ability of any person having a beneficial interest in Warrants represented by a Global Warrant to resell, pledge or otherwise transfer such Warrants may be impaired if the proposed transferee of such Warrants is not eligible to hold such Warrants through a Direct or Indirect participant in the DTC system.

Subject to compliance with the transfer restrictions applicable to the Rule 144A Global Warrants and Regulation S/Rule 144A Global Warrants described under "Notice to Purchasers and Holders of Securities and Transfer Restrictions", cross-market transfers between DTC, on the one hand, and directly or indirectly through Euroclear, Clearstream, Luxembourg accountholders, on the other, will be effected by the relevant clearing system in accordance with its rules and through action taken by the Principal Security Agent, the New York Warrant Agent and any custodian ("Custodian") with whom the relevant Global Warrants have been deposited.

On or after the Issue Date for any Securities, transfers of such Securities between accountholders in Euroclear, Clearstream, Luxembourg, Clearstream, Frankfurt and Euroclear France and transfers of such Securities between participants in DTC will generally have a settlement date three business days after the trade date (T+3). The customary arrangements for delivery versus payment will apply to such transfers.

Cross-market transfers between accountholders in Euroclear, Clearstream, Luxembourg and DTC participants will need to have an agreed settlement date between the parties to such transfer. Because there is no direct link between DTC, on the one hand, and Euroclear, Clearstream, Luxembourg, on the other, transfers of interests in the relevant Global Warrants will be effected through the Principal Security Agent, the New York Warrant Agent and the Custodian receiving instructions (and where appropriate certification) from the transferor and arranging for delivery of the interests being transferred to the credit of the designated

account for the transferee. In the case of cross-market transfers, settlement between Euroclear, Clearstream, Luxembourg accountholders and DTC participants cannot be made on a delivery versus payment basis. The Warrants will be delivered on a free delivery basis and arrangements for payment must be made separately.

DTC, Euroclear, Clearstream, Luxembourg and Clearstream, Frankfurt have each published rules and operating procedures designed to facilitate transfers of beneficial interests in Global Securities and Global Notes, as the case may be, among participants and accountholders of DTC, Euroclear, Clearstream, Luxembourg and Clearstream, Frankfurt. However, they are under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued or changed at any time. None of the Issuers, ML&Co., the Security Agents or any Dealer will be responsible for any performance by DTC, Euroclear, Clearstream, Luxembourg or Clearstream, Frankfurt or their respective direct or indirect participants or accountholders of their respective obligations under the rules and procedures governing their operations and none of them will have any liability for any aspect of the records relating to or payments made on account of beneficial interests in the Securities represented by Global Securities or Global Notes, as the case may be, or for maintaining, supervising or reviewing any records relating to such beneficial interests.

## NOTICE TO PURCHASERS AND HOLDERS OF SECURITIES AND TRANSFER RESTRICTIONS

*As a result of the following restrictions, purchasers of Securities are advised to consult legal counsel prior to making any purchase, offer, sale, resale or other transfer of such Securities.*

### Notes and Certificates

No Notes or Certificates of any series nor the related guarantee, nor the Entitlement (if any), have been, or will be, registered under the United States Securities Act of 1933, as amended (the "**Securities Act**") or under any state securities laws. The Notes and the Certificates and any Entitlement are only being offered and sold pursuant to the registration exemption contained in Regulation S under the Securities Act. No Notes or Certificates of any series, or interests therein, or Entitlement with respect thereto may at any time be offered, sold, resold, traded, pledged, exercised, redeemed, transferred or delivered, directly or indirectly, in the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (the "**United States**") or directly or indirectly offered, sold, resold, traded, pledged, exercised, redeemed, transferred or delivered to, or for the account or benefit of, any person who is (i) an individual who is a citizen or resident of the United States; (ii) a corporation, partnership or other entity treated as a corporation or partnership for United States federal income tax purposes created or organised in or under the laws of the United States, any State thereof or the District of Columbia or which has its principal place of business in the United States; (iii) any estate which is subject to United States federal income taxation regardless of the source of its income; (iv) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and if one or more United States trustees have the authority to control all substantial decisions of the trust or any trust which elected to be treated as a United States person prior to 20th August, 1996; (v) a pension plan for the employees, officers or principals of a corporation, partnership or other entity described in (ii) above; or (vi) any other "U.S. person" as such term may be defined in Regulation S under the Securities Act ("**U.S. person**"). Consequently, any offer, sale, resale, trade, pledge, exercise, redemption, transfer or delivery of any Notes or Certificates made, directly or indirectly, within the United States or to, or for the account or benefit of, a U.S. person will not be recognised.

Any person purchasing Notes or Certificates of any series must agree with the Dealer or the seller of such Notes or Certificates that:

- (i) it is not a U.S. person and it is not located in the United States and was not solicited to purchase the Notes or Certificates, as applicable, while present in the United States;
- (ii) it will not at any time offer, sell, resell, trade, pledge, exercise, redeem, transfer or deliver, directly or indirectly, any Notes or Certificates, as applicable, of such series so purchased in the United States or to, or for the account or benefit of, any U.S. person or to others for offer, sale, resale, trade, pledge, exercise, redemption, transfer or delivery, directly or indirectly, in the United States or to, or for the account or benefit of any, U.S. person;
- (iii) it is not purchasing any Notes or Certificates, as applicable, of such series for the account or benefit of any U.S. person;
- (iv) it will not make offers, sales, resales, trades, pledges, exercises, redemptions, transfers or deliveries of any Notes or Certificates, as applicable, of such series (otherwise acquired), directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person;
- (v) prior to the delivery of any Entitlement in respect of a Security settled by Physical Delivery (a "**Physical Delivery Security**") the holder thereof will be required to represent that, inter alia, he is not a U.S. person, the Note or Certificate, as applicable, was not exercised on behalf of a U.S. person and no cash, and in the case of Physical Delivery Securities, no securities or other property have been or will be delivered within the United States or to, or the account or benefit of, a U.S. person in connection with any exercise thereof;
- (vi) it acknowledges that the Global Notes and Global Certificates will bear a legend to the following effect unless otherwise agreed to by the applicable Issuer:

"THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER SECURITIES LAWS. ACCORDINGLY, THIS SECURITY, OR ANY INTERESTS THEREIN, MAY NOT BE OFFERED, SOLD, RESOLD, TRADED, PLEDGED, EXERCISED, REDEEMED, TRANSFERRED OR DELIVERED, DIRECTLY OR INDIRECTLY, IN THE UNITED STATES OF AMERICA (INCLUDING THE STATES AND THE DISTRICT OF COLUMBIA), ITS TERRITORIES, ITS POSSESSIONS AND OTHER AREAS SUBJECT TO ITS JURISDICTION (THE "UNITED STATES") OR DIRECTLY OR INDIRECTLY OFFERED, SOLD, RESOLD, TRADED, PLEDGED, EXERCISED, REDEEMED, TRANSFERRED OR DELIVERED TO, OR FOR THE ACCOUNT OR BENEFIT OF, ANY PERSON WHO IS (I) AN INDIVIDUAL WHO IS A CITIZEN OR RESIDENT OF THE UNITED STATES; (II) A CORPORATION, PARTNERSHIP OR OTHER ENTITY TREATED AS A CORPORATION OR PARTNERSHIP FOR UNITED STATES FEDERAL INCOME TAX PURPOSES, CREATED OR ORGANISED IN OR UNDER THE LAWS OF THE UNITED STATES, ANY STATE THEREOF OR THE DISTRICT OF COLUMBIA, OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES; (III) ANY ESTATE WHICH IS SUBJECT TO UNITED STATES FEDERAL INCOME TAXATION REGARDLESS OF THE SOURCE OF ITS INCOME; (IV) ANY TRUST IF A COURT WITHIN THE UNITED STATES IS ABLE TO EXERCISE PRIMARY SUPERVISION OVER THE ADMINISTRATION OF THE TRUST AND IF ONE OR MORE UNITED STATES TRUSTEES HAVE THE AUTHORITY TO CONTROL ALL SUBSTANTIAL DECISIONS OF THE TRUST (OR ANY TRUST WHICH ELECTED TO BE TREATED AS A UNITED STATES PERSON PRIOR TO 20TH AUGUST, 1996); (V) A PENSION PLAN FOR THE EMPLOYEES, OFFICERS OR PRINCIPALS OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY DESCRIBED IN (II) ABOVE; OR (VI) ANY OTHER "U.S. PERSON" AS SUCH TERM MAY BE DEFINED IN REGULATION S UNDER THE SECURITIES ACT ("U.S. PERSON")."; and

- (vii) that the relevant Issuer and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and agrees that if any of such acknowledgements, representations or agreements made by it are no longer accurate, it shall promptly notify the relevant Issuer; and if it is acquiring any Notes or Certificates as a fiduciary or agent for one or more accounts it represents that it has sole investment discretion with respect to each such account and that it has full power to make the foregoing acknowledgements, representations and agreements on behalf of each such account.

## Warrants

Neither the Warrants of any series, the related guarantee of ML&Co., nor any Entitlements have been registered under the Securities Act or under any state securities laws and furthermore MLCo. has not been registered as an investment company under the United States Investment Company Act of 1940, as amended (the "1940 Act"). Offers, sales and resales of the Warrants may not be made within the United States or to, or for the account or benefit of, U.S. persons (as defined in Regulation S) except to "qualified institutional buyers" ("QIBs") as defined in Rule 144A that are also "qualified purchasers" ("QPs") within the meaning of Section 3(c)(7) ("Section 3(c)(7)") and as defined in Section 2(a)(51) of the 1940 Act and the Rules thereunder and who have executed and delivered an Investor Representation Letter. Accordingly, (i) Warrants represented by a Rule 144A Global Warrant or a Regulation S/Rule 144A Global Warrant are being offered and sold in the United States and to, or for the account or benefit of, U.S. persons (as defined herein) exclusively to QIBs who are also QPs pursuant to the exemption from the registration requirements of the Securities Act provided in Section 4(2) thereof and in compliance with Section 3(c)(7) and (ii) the Warrants are being offered and sold outside the United States to persons other than U.S. persons, which term shall include dealers or other professional fiduciaries in the United States acting on a discretionary basis for foreign beneficial owners (other than an estate or trust), in reliance upon Regulation S. For the purposes hereof, "U.S. person" means (i) an individual who is a citizen or resident of the United States; (ii) a corporation, partnership or other entity treated as a corporation or partnership for United States federal income tax purposes, created or organised in or under the laws of the United States, any State thereof or the District of Columbia, or which has its principal place of business in the United States; (iii) any estate or trust

which is subject to United States federal income taxation regardless of the source of its income; (iv) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and if one or more United States trustees have the authority to control all substantial decisions of the trust or any trust which elected to be treated as a United States person prior to 20th August, 1996; (v) a pension plan for the employees, officers or principals of a corporation, partnership or other entity described in (ii) above; or (vi) any other "U.S. person" as such term may be defined in Regulation S under the Securities Act.

Prior to the delivery of the Entitlement in respect of a Physical Delivery Warrant, the holder thereof will be required to represent that, inter alia, he is not a U.S. person, the Warrant was not exercised on behalf of a U.S. person and no cash, and in the case of Physical Delivery Securities, no securities or other property have been or will be delivered within the United States or to, or for the account or benefit of, a U.S. person in connection with any exercise thereof.

Each purchaser of Warrants will, in connection with its purchase of such Warrants, be required to acknowledge, represent and agree substantially to the following effect (terms used in this paragraph that are defined in Rule 144A or in Regulation S are used herein as defined therein):

(i) that either:

(a) in the case of exchange, sale or transfer of a Warrant in the United States or to, or for the account or benefit of, a U.S. person who takes delivery in the form of Warrants represented by a Rule 144A Global Warrant or a Regulation S/Rule 144A Global Warrant,

- (1) it is a QIB that is also a QP (a "QIB/QP");
- (2) it is not a dealer as described in Rule 144A(a)(1)(ii) which owns and invests on a discretionary basis less than US\$25,000,000 in securities of issuers that are not affiliated with the dealer;
- (3) it is not a partnership, common trust fund, special trust, pension fund, retirement plan or other entity under which the partners, beneficial owners or participants, as the case may be, may designate the particular investments to be made on the allocation thereof;
- (4) if it is an investment company excepted from the 1940 Act pursuant to Section 3(c)(1) or Section 3(c)(7) thereof (or a foreign investment company under Section 7(d) thereof relying on Section 3(c)(1) or Section 3(c)(7) thereof with respect to its U.S. holders) and was formed on or before 30th April, 1996, it has received the consent of those of its beneficial owners who acquired their interests on or before 30th April, 1996 with respect to its treatment as a qualified purchaser in the manner required by Section 2(a)(51)(C) of the 1940 Act and the rules thereunder;
- (5) it is acting for its own account, or the account of another entity that meets the requirements of this paragraph (i)(a);
- (6) it is not an entity that will have invested more than 40% of its assets in the Issuer's securities after giving effect to the purchase of such warrants;
- (7) it is not formed, reformed or recapitalised for the purpose of investing in the Warrants or other securities of the Issuer unless each of its beneficial owners is a QIB/QP who was not so formed;
- (8) it is not, and is not a fiduciary investing assets of or on behalf of, (i) an employee benefit plan (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA; (ii) a plan (as defined in Section 4975(e)(1) of the United States Internal Revenue Code of 1986, as amended (the "Code")) that is subject to section 4975 of the Code; or (iii) an entity whose assets include assets of a plan described in (i) or (ii) above by reason of such a plan's investment in the entity under 29 C.F.R. §2510.3-101 as modified by Section 3(42) of ERISA or otherwise;

- (9) if it will hold Warrants through DTC, it acknowledges that beneficial interests in the Warrants are held only in book-entry form through the facilities of DTC; it agrees that, at all times, it will hold its interest in the Warrants in its account at an Authorised Custodian; it acknowledges that the relevant Authorised Custodian has agreed with the Issuer and such Issuer's agents not to transfer any portion of the purchaser's interest in the Warrants to the account of any other person at the relevant Authorised Custodian, or to the account of any other participant in DTC, without such Issuer's prior written consent or the prior written consent of a person authorized to act on behalf of such Issuer; and
  - (10) it will provide notice of applicable transfer restrictions to any subsequent transferees; or
- (b) it is outside the United States and is not a U.S. person;
- (ii) that it understands and acknowledges that the Issuer has not been registered and will not register as an investment company under the 1940 Act and the Warrants and the related guarantee have not been registered under the Securities Act or any other applicable securities law, are being offered for sale in transactions not requiring registration under the Securities Act or any other securities laws, including sales pursuant to Rule 144A, and may not be offered, sold or otherwise transferred except in compliance with the registration requirements of the Securities Act or any other applicable securities law, pursuant to an exemption therefrom or in a transaction not subject thereto and in each case in compliance with the conditions for transfer set forth in paragraph (x) below;
  - (iii) that it understands and acknowledges that trading in the Warrants and the related guarantee has not been approved by the Commodity Futures Trading Commission under the United States Commodity Exchange Act, as amended;
  - (iv) that in issuing Warrants linked to any underlying asset (an "**Underlying Asset**"), the Issuer is not making, and has not made any representations whatsoever as to any such Underlying Asset or any information contained in any document filed by any such issuer of such Underlying Asset with any exchange or with any governmental entity regulating the purchase and sale of securities or the Warrants linked to any Underlying Asset;
  - (v) that the Issuer and any affiliate of such Issuer may, whether by virtue of the types of relationships described above or otherwise, at the date hereof or at any time hereafter be in possession of information in relation to any issuer of an Underlying Asset which is or may be material in the context of the Warrants linked to any Underlying Asset and which is or may not be known to the general public or the holder. The Warrants linked to any Underlying Asset do not create any obligation on the part of the Issuer or any affiliate of the Issuer to disclose to the holder any such relationship or information (whether or not confidential) and neither the Issuer nor any other affiliate of the Issuer shall be liable to the holder by reason of such non-disclosure. No such information had been used in the selection of any issuer of an Underlying Asset for the Warrants linked to any Underlying Asset;
  - (vi) in the case of Share Linked Warrants that the Issuer and any affiliate of the Issuer may have existing or future business relationships with any issuer of an Underlying Asset (including, but not limited to, lending, depository, risk management, advisory or banking relationships), and will pursue actions and take steps that it deems or they deem necessary or appropriate to protect its or their interests arising therefrom without regard to the consequences for a holder of such Warrants linked to any such Underlying Asset;
  - (vii) that the market value of the Warrants linked to any such Underlying Asset may be adversely affected by movements in the value of the Underlying Asset or in currency exchange rates;
  - (viii) that the Cash Settlement Amount (if any) in respect of any Warrant may be less than its Issue Price;
  - (ix) that, if in the future it decides to resell, pledge or otherwise transfer the Warrants or any beneficial interests in the Warrants, it will do so, only to or through the Issuer (a) inside the United States to a

person meeting the requirements of Clause (i)(a) above or (b) outside the United States in compliance with Rule 903 or Rule 904 under the Securities Act;

- (x) it will, and will require each subsequent Holder to, notify any purchaser of the Warrants from it of the resale restrictions referred to in paragraph (ii) above;
- (xi) that prior to the delivery of the Entitlement in respect of a Physical Delivery Warrant the holder thereof will be required to represent that, inter alia, he is not a U.S. person, the Warrant was not exercised on behalf of a U.S. person and no cash, and in the case of Physical Delivery Securities, no securities or other property have been or will be delivered within the United States or to, or the account or benefit of, a U.S. person in connection with any exercise thereof;
- (xii) that Warrants initially offered exclusively (a) in the United States to QIBs/QPs or (b) to, or for the account or benefit of, U.S. persons who are QIBs/QPs will be represented by one or more Rule 144A Global Warrants, and that Warrants initially offered (a) in the United States to QIBs/QPs or (b) to, or for the account or benefit of, U.S. persons who are QIBs/QPs and concurrently outside the United States in reliance on Regulation S will be represented by one or more Regulation S/Rule 144A Global Warrants;
- (xiii) that it is purchasing the Warrants for its own account, or for one or more investor accounts for which it is acting as a fiduciary or agent, in each case for investment, and not with a view to, or for offer or sale in connection with, any distribution thereof in violation of the Securities Act, subject to any requirement of law that the disposition of its property or the property of such investor account or accounts be at all times within its or their control. It agrees on its own behalf and on behalf of any investor account for which it is purchasing the Warrants, and each subsequent holder of the Warrants by its acceptance thereof will agree, to offer, sell or otherwise transfer such Warrants, only pursuant to the representations, restrictions and agreements described in the legends following this paragraph. It and any future purchaser acknowledge that each Global Warrant will contain a legend substantially to the following effect:

#### **Rule 144A Global Warrants**

"THE WARRANTS AND THE GUARANTEE REPRESENTED BY THIS GLOBAL SECURITY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD IN VIOLATION OF THE SECURITIES ACT OR SUCH OTHER SECURITIES LAWS. MERRILL LYNCH INTERNATIONAL & CO. C.V., THE ISSUER OF THIS SECURITY, HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "1940 ACT").

THE WARRANTS AND THE GUARANTEE REPRESENTED BY THIS GLOBAL SECURITY MAY NOT BE RESOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE AGENCY AGREEMENT REFERRED TO HEREIN AND OTHER THAN PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER. A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND SHALL BE DELIVERED TO EACH PERSON TO WHOM SECURITIES REPRESENTED BY THIS GLOBAL SECURITY ARE TRANSFERRED.

THE HOLDER OF ANY WARRANTS AND THE GUARANTEE AND THE HOLDER OF ANY BENEFICIAL INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY, AGREES FOR THE BENEFIT OF THE ISSUER THAT ANY BENEFICIAL INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY MAY BE RESOLD OR OTHERWISE TRANSFERRED ONLY TO OR THROUGH THE ISSUER TO A PERSON (A) THAT IS A "QUALIFIED INSTITUTIONAL BUYER" ("QIB") AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT AND A "QUALIFIED PURCHASER" ("QP") WITHIN THE MEANING OF SECTION 3(c)(7), AND AS DEFINED IN SECTION 2(a)(51), OF THE 1940 ACT AND THE RULES THEREUNDER; (B) THAT IS NOT (i) A DEALER DESCRIBED IN RULE 144A(a)(1)(ii) THAT OWNS AND INVESTS ON A DISCRETIONARY BASIS LESS THAN US\$25,000,000 IN SECURITIES OF ISSUERS THAT ARE NOT



AFFILIATED WITH THE DEALER, (ii) A PARTNERSHIP, COMMON TRUST FUND, SPECIAL TRUST, PENSION FUND, RETIREMENT PLAN OR OTHER ENTITY IN WHICH THE PARTNERS, BENEFICIARIES, BENEFICIAL OWNERS OR PARTICIPANTS, AS THE CASE MAY BE, MAY DESIGNATE THE PARTICULAR INVESTMENTS TO BE MADE OR THE ALLOCATION THEREOF, (iii) AN INVESTMENT COMPANY EXCEPTED FROM THE 1940 ACT PURSUANT TO SECTION 3(c)(1) OR SECTION 3(c)(7) THEREOF (OR A FOREIGN INVESTMENT COMPANY UNDER SECTION 7(d) THEREOF RELYING ON SECTION 3(c)(1) OR SECTION 3(c)(7) THEREOF WITH RESPECT TO ITS U.S. HOLDERS) AND FORMED ON OR PRIOR TO 30TH APRIL, 1996, THAT HAS NOT RECEIVED THE CONSENT OF EACH OF ITS BENEFICIAL OWNERS WITH RESPECT TO ITS TREATMENT AS A QUALIFIED PURCHASER IN THE MANNER REQUIRED BY SECTION 2(a)(51)(C) OF THE 1940 ACT AND THE RULES THEREUNDER OR (iv) AN ENTITY THAT WILL HAVE INVESTED MORE THAN 40% OF ITS ASSETS IN THE ISSUER'S SECURITIES; (C) THAT WAS NOT FORMED, REFORMED OR RECAPITALISED FOR THE PURPOSE OF INVESTING IN THE SECURITIES OR OTHER SECURITIES OF THE ISSUER UNLESS EACH OF ITS BENEFICIAL OWNERS IS BOTH A QIB AND A QP WHO WAS NOT SO FORMED; (D) THAT WILL PROVIDE NOTICE OF APPLICABLE TRANSFER RESTRICTIONS TO ANY SUBSEQUENT TRANSFEREE; (E) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNTS OF ONE OR MORE OTHER PERSONS EACH OF WHOM MEETS ALL OF THE REQUIREMENTS OF CLAUSES (A) THROUGH (E); AND (F) THAT AGREES THAT IT WILL NOT REOFFER, RESELL, PLEDGE OR OTHERWISE TRANSFER ANY INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY TO ANY PERSON EXCEPT TO OR THROUGH THE ISSUER TO A PERSON THAT MEETS ALL OF THE REQUIREMENTS OF CLAUSES (A) THROUGH (E) AND THAT AGREES NOT TO SUBSEQUENTLY TRANSFER ANY INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY EXCEPT IN ACCORDANCE WITH THIS CLAUSE (F). EACH HOLDER OF A BENEFICIAL INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY SHALL BE REQUIRED TO REPRESENT WITH RESPECT TO ITSELF AND EACH ACCOUNT FOR WHICH IT IS PURCHASING THAT IT AND EACH SUCH ACCOUNT SATISFIES THE REQUIREMENTS SET FORTH IN THE PRECEDING SENTENCE AND ANY RESALE OR OTHER TRANSFER OF ITS INTEREST IN SUCH SECURITIES MAY ONLY BE MADE TO A PERSON SATISFYING THE REQUIREMENTS IN THE PRECEDING SENTENCE AND WILL REQUIRE THE SUBMISSION TO THE BANK OF NEW YORK MELLON (THE "SECURITY AGENT") OF A DULY COMPLETED TRANSFEREE LETTER, IN THE FORM AVAILABLE FROM THE SECURITY AGENT OR THE ISSUER WITH RESPECT TO ANY INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY. IF AT ANY TIME THE SECURITY AGENT SUBSEQUENTLY DETERMINES OR IS SUBSEQUENTLY NOTIFIED BY THE ISSUER THAT (i) THE HOLDER OF ANY INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY WAS IN BREACH, AT THE TIME GIVEN, OF ANY REPRESENTATION OR AGREEMENT SET FORTH HEREIN OR IN ANY LETTER DELIVERED TO THE ISSUER, THE PURPORTED TRANSFER SHALL BE ABSOLUTELY NULL AND VOID *AB INITIO* AND SHALL VEST NO RIGHTS IN THE PURPORTED TRANSFEREE (SUCH PURPORTED TRANSFEREE, A "DISQUALIFIED TRANSFEREE") AND THE LAST PRECEDING HOLDER OF SUCH INTEREST THAT WAS NOT A DISQUALIFIED TRANSFEREE SHALL BE RESTORED TO ALL RIGHTS AS A HOLDER THEREOF RETROACTIVELY TO THE DATE OF SUCH TRANSFER OF SUCH INTEREST BY SUCH HOLDER.

IF REQUESTED BY THE ISSUER OR BY A SECURITY AGENT, THE PURCHASER AGREES TO PROVIDE THE INFORMATION NECESSARY TO DETERMINE WHETHER THE TRANSFER OF THIS SECURITY IS PERMISSIBLE UNDER THE SECURITIES ACT AND THE 1940 ACT.

THE WARRANTS AND GUARANTEE AND RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON AND PROCEDURES FOR RESALES AND OTHER TRANSFERS OF THE SECURITIES TO

REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. BY THE ACCEPTANCE OF A SECURITY, THE PURCHASER THEREOF SHALL BE DEEMED TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT."

**Global Warrants other than Rule 144A Global Warrants and Regulation S/Rule 144A Global Warrants**

"THE WARRANTS AND THE GUARANTEE AND ANY ENTITLEMENT REPRESENTED BY THIS GLOBAL SECURITY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD IN VIOLATION OF THE SECURITIES ACT OR SUCH OTHER SECURITIES LAWS. MERRILL LYNCH INTERNATIONAL & CO. C.V., THE ISSUER OF THIS SECURITY, HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "1940 ACT"). THE WARRANTS REPRESENTED BY THIS GLOBAL SECURITY MAY NOT BE EXERCISED BY OR ON BEHALF OF ANY U.S. PERSON UNLESS REGISTERED UNDER THE SECURITIES ACT OR AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE.

THE WARRANTS, THE GUARANTEE AND ANY ENTITLEMENT REPRESENTED BY THIS GLOBAL SECURITY MAY NOT BE RESOLD OR OTHERWISE TRANSFERRED EXCEPT TO A PERSON WHO IS NOT A "U.S. PERSON" (AS DEFINED HEREIN) AND WHO IS ACQUIRING THE SECURITIES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT. FOR THE PURPOSES HEREOF, "U.S. PERSON" IS DEFINED AS ANY PERSON WHO IS (I) AN INDIVIDUAL WHO IS A CITIZEN OR RESIDENT OF THE UNITED STATES; (II) A CORPORATION, PARTNERSHIP OR OTHER ENTITY TREATED AS A CORPORATION OR PARTNERSHIP FOR UNITED STATES FEDERAL INCOME TAX PURPOSES, CREATED OR ORGANISED IN OR UNDER THE LAWS OF THE UNITED STATES, ANY STATE THEREOF OR THE DISTRICT OF COLUMBIA OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES; (III) ANY ESTATE WHICH IS SUBJECT TO UNITED STATES FEDERAL INCOME TAXATION REGARDLESS OF THE SOURCE OF ITS INCOME; (IV) ANY TRUST IF A COURT WITHIN THE UNITED STATES IS ABLE TO EXERCISE PRIMARY SUPERVISION OVER THE ADMINISTRATION OF THE TRUST AND IF ONE OR MORE UNITED STATES TRUSTEES HAVE THE AUTHORITY TO CONTROL ALL SUBSTANTIAL DECISIONS OF THE TRUST (OR ANY TRUST WHICH ELECTED TO BE TREATED AS A UNITED STATES PERSON PRIOR TO 20TH AUGUST, 1996); (V) A PENSION PLAN FOR THE EMPLOYEES, OFFICERS OR PRINCIPALS OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY DESCRIBED IN (II) ABOVE; OR (VI) ANY OTHER "U.S. PERSON" AS SUCH TERM MAY BE DEFINED IN REGULATION S UNDER THE SECURITIES ACT. EACH HOLDER OF A BENEFICIAL INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY SHALL BE DEEMED TO HAVE REPRESENTED WITH RESPECT TO ITSELF AND EACH ACCOUNT FOR WHICH IT IS PURCHASING THAT IT AND EACH SUCH ACCOUNT SATISFIES THE REQUIREMENTS SET FORTH IN THE PRECEDING SENTENCE AND ANY RESALE OR OTHER TRANSFER OF ITS INTEREST IN SUCH SECURITIES MAY ONLY BE MADE TO A PERSON SATISFYING THE REQUIREMENTS IN THE PRECEDING SENTENCE. CONSEQUENTLY, ANY OFFER, SALE, RESALE, TRADE OR DELIVERY MADE, DIRECTLY OR INDIRECTLY, WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON WILL NOT BE RECOGNISED.

THE WARRANTS, THE GUARANTEE AND ANY ENTITLEMENT AND RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON AND PROCEDURES FOR REALES AND OTHER TRANSFERS OF THE SECURITIES TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO

THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. BY THE ACCEPTANCE OF A SECURITY, THE PURCHASER THEREOF SHALL BE DEEMED TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT."

**Regulation S/Rule 144A Global Warrants**

"THE WARRANTS AND THE GUARANTEE REPRESENTED BY THIS GLOBAL SECURITY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY OTHER SECURITIES LAWS, AND MAY NOT BE OFFERED OR SOLD IN VIOLATION OF THE SECURITIES ACT OR SUCH OTHER SECURITIES LAWS. MERRILL LYNCH INTERNATIONAL & CO. C.V., THE ISSUER OF THIS SECURITY, HAS NOT BEEN AND WILL NOT BE REGISTERED UNDER THE INVESTMENT COMPANY ACT OF 1940, AS AMENDED (THE "1940 ACT").

THE WARRANTS AND THE GUARANTEE REPRESENTED BY THIS GLOBAL SECURITY MAY NOT BE RESOLD OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE AGENCY AGREEMENT REFERRED TO HEREIN AND OTHER THAN PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT PROVIDED BY REGULATION S OR RULE 144A THEREUNDER. A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND SHALL BE DELIVERED TO EACH PERSON TO WHOM SECURITIES REPRESENTED BY THIS GLOBAL SECURITY ARE TRANSFERRED.

THE HOLDER OF ANY WARRANTS AND THE HOLDER OF ANY BENEFICIAL INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY, AGREES BY ITS ACQUISITION HEREOF FOR THE BENEFIT OF THE ISSUER THAT ANY BENEFICIAL INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY MAY BE RESOLD OR OTHERWISE TRANSFERRED ONLY (1) TO A PERSON THAT IS NOT A "U.S. PERSON" (AS DEFINED HEREIN) AND THAT IS ACQUIRING THE SECURITIES IN AN OFFSHORE TRANSACTION IN COMPLIANCE WITH REGULATION S UNDER THE SECURITIES ACT; OR (2) TO OR THROUGH THE ISSUER TO A PERSON (A) THAT IS A "QUALIFIED INSTITUTIONAL BUYER" ("QIB") AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT AND A "QUALIFIED PURCHASER" ("QP") WITHIN THE MEANING OF SECTION 3(c)(7), AND AS DEFINED IN SECTION 2(a)(51), OF THE 1940 ACT AND THE RULES THEREUNDER; (B) THAT IS NOT (I) A DEALER DESCRIBED IN RULE 144A(a)(1)(ii) THAT OWNS AND INVESTS ON A DISCRETIONARY BASIS LESS THAN US\$25,000,000 IN SECURITIES OF ISSUERS THAT ARE NOT AFFILIATED WITH THE DEALER, (II) A PARTNERSHIP, COMMON TRUST FUND, SPECIAL TRUST, PENSION FUND, RETIREMENT PLAN OR OTHER ENTITY IN WHICH THE PARTNERS, BENEFICIARIES, BENEFICIAL OWNERS OR PARTICIPANTS, AS THE CASE MAY BE, MAY DESIGNATE THE PARTICULAR INVESTMENTS TO BE MADE OR THE ALLOCATION THEREOF, (III) AN INVESTMENT COMPANY EXCEPTED FROM THE 1940 ACT PURSUANT TO SECTION 3(c)(1) OR SECTION 3(c)(7) THEREOF (OR A FOREIGN INVESTMENT COMPANY UNDER SECTION 7(d) THEREOF RELYING ON SECTION 3(c)(1) OR SECTION 3(c)(7) THEREOF WITH RESPECT TO ITS U.S. HOLDERS) AND FORMED ON OR PRIOR TO 30TH APRIL, 1996, THAT HAS NOT RECEIVED THE CONSENT OF EACH OF ITS BENEFICIAL OWNERS WITH RESPECT TO ITS TREATMENT AS A QUALIFIED PURCHASER IN THE MANNER REQUIRED BY SECTION 2(a)(51)(C) OF THE 1940 ACT AND THE RULES THEREUNDER, OR (IV) AN ENTITY THAT WILL HAVE INVESTED MORE THAN 40% OF ITS ASSETS IN THE ISSUER'S SECURITIES; (C) THAT WAS NOT FORMED, REFORMED OR RECAPITALISED FOR THE PURPOSE OF INVESTING IN THE SECURITIES OR OTHER SECURITIES OF THE ISSUER UNLESS EACH OF ITS BENEFICIAL OWNERS IS BOTH A QIB AND A QP WHO WAS NOT SO FORMED; (D) THAT WILL PROVIDE NOTICE OF APPLICABLE TRANSFER RESTRICTIONS TO ANY SUBSEQUENT TRANSFEREE; (E) THAT IS PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNTS OF ONE OR MORE OTHER PERSONS EACH OF WHOM MEETS ALL OF THE REQUIREMENTS OF CLAUSES (A) THROUGH (E); AND (3) THAT AGREES THAT IT WILL NOT REOFFER, RESELL,

PLEDGE OR OTHERWISE TRANSFER ANY INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY TO ANY PERSON EXCEPT TO OR THROUGH THE ISSUER TO A PERSON THAT MEETS ALL OF THE REQUIREMENTS OF EITHER CLAUSE (1) OR (2) AND THAT AGREES NOT TO SUBSEQUENTLY TRANSFER ANY INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY EXCEPT IN ACCORDANCE WITH THIS CLAUSE (3). FOR THE PURPOSES HEREOF, "U.S. PERSON" IS DEFINED AS ANY PERSON WHO IS (I) AN INDIVIDUAL WHO IS A CITIZEN OR RESIDENT OF THE UNITED STATES; (II) A CORPORATION, PARTNERSHIP OR OTHER ENTITY TREATED AS A CORPORATION OR PARTNERSHIP FOR UNITED STATES FEDERAL INCOME TAX PURPOSES, CREATED OR ORGANISED IN OR UNDER THE LAWS OF THE UNITED STATES, ANY STATE THEREOF OR THE DISTRICT OF COLUMBIA OR WHICH HAS ITS PRINCIPAL PLACE OF BUSINESS IN THE UNITED STATES; (III) ANY ESTATE WHICH IS SUBJECT TO UNITED STATES FEDERAL INCOME TAXATION REGARDLESS OF THE SOURCE OF ITS INCOME; (IV) ANY TRUST IF A COURT WITHIN THE UNITED STATES IS ABLE TO EXERCISE PRIMARY SUPERVISION OVER THE ADMINISTRATION OF THE TRUST AND IF ONE OR MORE UNITED STATES TRUSTEES HAVE THE AUTHORITY TO CONTROL ALL SUBSTANTIAL DECISIONS OF THE TRUST (OR ANY TRUST WHICH ELECTED TO BE TREATED AS A UNITED STATES PERSON PRIOR TO 20TH AUGUST, 1996); (V) A PENSION PLAN FOR THE EMPLOYEES, OFFICERS OR PRINCIPALS OF A CORPORATION, PARTNERSHIP OR OTHER ENTITY DESCRIBED IN (II) ABOVE); OR (VI) ANY OTHER "U.S. PERSON" AS SUCH TERM MAY BE DEFINED IN REGULATIONS UNDER THE SECURITIES ACT. EACH HOLDER OF A BENEFICIAL INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY SHALL BE REQUIRED TO REPRESENT WITH RESPECT TO ITSELF AND EACH ACCOUNT FOR WHICH IT IS PURCHASING THAT IT AND EACH SUCH ACCOUNT SATISFIES THE REQUIREMENTS SET FORTH IN THE PRECEDING SENTENCE AND ANY RESALE OR OTHER TRANSFER OF ITS INTEREST IN SUCH SECURITIES MAY ONLY BE MADE TO A PERSON SATISFYING THE REQUIREMENTS IN THE PRECEDING SENTENCE AND WILL REQUIRE THE SUBMISSION TO THE BANK OF NEW YORK MELLON (THE "SECURITY AGENT") OF A DULY COMPLETED TRANSFEREE LETTER, IN THE FORM AVAILABLE FROM THE SECURITY AGENT OR THE ISSUER WITH RESPECT TO ANY INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY. IF AT ANY TIME THE SECURITY AGENT SUBSEQUENTLY DETERMINES OR IS SUBSEQUENTLY NOTIFIED BY THE ISSUER THAT (i) THE HOLDER OF ANY INTEREST IN THE SECURITIES REPRESENTED BY THIS GLOBAL SECURITY WAS IN BREACH, AT THE TIME GIVEN, OF ANY REPRESENTATION OR AGREEMENT SET FORTH HEREIN OR IN ANY LETTER DELIVERED TO THE ISSUER, THE PURPORTED TRANSFER SHALL BE ABSOLUTELY NULL AND VOID *AB INITIO* AND SHALL VEST NO RIGHTS IN THE PURPORTED TRANSFEREE (SUCH PURPORTED TRANSFEREE, A "**DISQUALIFIED TRANSFEREE**") AND THE LAST PRECEDING HOLDER OF SUCH INTEREST THAT WAS NOT A DISQUALIFIED TRANSFEREE SHALL BE RESTORED TO ALL RIGHTS AS A HOLDER THEREOF RETROACTIVELY TO THE DATE OF SUCH TRANSFER OF SUCH INTEREST BY SUCH HOLDER.

THE HOLDER OF ANY WARRANTS AND THE HOLDER OF ANY BENEFICIAL INTERESTS IN THE WARRANTS REPRESENTED BY THIS GLOBAL SECURITY UNDERSTANDS THAT THE ISSUER MAY RECEIVE A LIST OF PARTICIPANTS OR ACCOUNTHOLDERS HOLDING POSITIONS IN ITS SECURITIES FROM DTC, EUROCLEAR OR CLEARSTREAM, LUXEMBOURG.

IF REQUESTED BY THE ISSUER OR BY A SECURITY AGENT, THE PURCHASER AGREES TO PROVIDE THE INFORMATION NECESSARY TO DETERMINE WHETHER THE TRANSFER OF THIS SECURITY IS PERMISSIBLE UNDER THE SECURITIES ACT AND THE 1940 ACT.

THE SECURITIES AND RELATED DOCUMENTATION MAY BE AMENDED OR SUPPLEMENTED FROM TIME TO TIME TO MODIFY THE RESTRICTIONS ON AND PROCEDURES FOR RESALES AND OTHER TRANSFERS OF THE SECURITIES TO REFLECT ANY CHANGE IN APPLICABLE LAW OR REGULATION (OR THE INTERPRETATION THEREOF) OR IN PRACTICES RELATING TO THE RESALE OR TRANSFER OF RESTRICTED SECURITIES GENERALLY. BY THE ACCEPTANCE OF A SECURITY, THE PURCHASER THEREOF SHALL BE DEEMED TO HAVE AGREED TO ANY SUCH AMENDMENT OR SUPPLEMENT.";

- (xiv) that it agrees it will deliver to each person to whom it transfers any of the Warrants notice of any restrictions on transfers of such Warrants;
- (xv) it agrees that in the event that at any time the Principal Warrant Agent determines or is notified by the relevant Issuer, the Guarantor or any of their affiliates that (i) a transfer or attempted or purported transfer of any interest in a Warrant was not consummated in compliance with the provisions of W&C Securities Condition 22 or Annex 11 to the Terms and Conditions - *Additional Terms and Conditions for Rule 144A Warrants*, as applicable, or on the basis of an incorrect form, representation or certification from such investor as set forth in the relevant investor letter (which shall be required to be executed by such investor in substantially same form as this letter), (ii) it is in breach at the time given of any representation or agreement set forth in any certificate or letter or any deemed representation or agreement delivered or deemed to be made by such purchaser, or (iii) a transfer or attempted transfer of any interest in a Warrant was consummated which did not comply with the transfer restrictions set forth in W&C Securities Condition 1(A) or Annex 11 to the Terms and Conditions - *Additional Terms and Conditions for Rule 144A Warrants*, as applicable, the purported transfer shall be absolutely null and void *ab initio* and shall vest no rights in such purchaser (being in such case, a "Disqualified Transferee") and the last preceding holder of such interest that was not a Disqualified Transferee shall be restored to all rights as a Holder thereof retroactively to the date of transfer of such interest by such Holder; and
- (xvi) that the relevant Issuer and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements and agrees that if any of such acknowledgements, representations or agreements made by it are no longer accurate, it shall promptly notify the relevant Issuer; and if it is acquiring any Warrants as a fiduciary or agent for one or more accounts it represents that it has sole investment discretion with respect to each such account and that it has full power to make the foregoing acknowledgements, representations and agreements on behalf of each such account.

Upon execution and delivery of an Investor Representation Letter by a QIB/QP, and, if required, execution and delivery of a Custodian Letter by the relevant DTC Direct Participant acting as custodian on behalf of such QIB/QP, Warrants will be issued in the form of a Rule 144A Global Warrant or a Regulation S/Rule 144A Global Warrant, as applicable.

The Investor Representation Letter will state, among other things, the following:

- (i) that the QIB/QP has received copies of this Base Prospectus and such other information as it deems necessary in order to make its investment decision;
- (ii) that the QIB/QP understands that any subsequent transfer of the Warrants is subject to certain restrictions and conditions set forth in this Base Prospectus and the Warrants (including those set out above) and that it agrees to be bound by, and not to resell, pledge or otherwise transfer the Warrants except in compliance with, such restrictions and conditions and the Securities Act;
- (iii) that the purchaser is a QIB as defined in Rule 144A, and a QP as defined in Section 2(a)(51) of the 1940 Act and the rules thereunder;
- (iv) (i) that the QIB/QP (A) is not (a) a dealer described in Rule 144A(a)(1)(ii) that owns and invests on a discretionary basis less than US\$25,000,000 in securities of issuers that are not affiliated with the dealer, (b) a partnership, common trust fund, special trust, pension fund, retirement plan or other entity in which the partners, beneficiaries, beneficial owners or participants, as the case may be, may

designate the particular investments to be made or the allocation thereof, (c) an investment company excepted from the Investment Company Act pursuant to Section 3(c)(1) or Section 3(c)(7) thereof (or a foreign investment company under Section 7(d) thereof relying on Section 3(c)(1) or Section 3(c)(7) thereof with respect to its U.S. holders) and formed on or prior to 30th April, 1996, that has not received the consent of each of its beneficial owners with respect to its treatment as a qualified purchaser in the manner required by Section 2(a)(51)(C) of the Investment Company Act and the rules thereunder, (d) an entity that will have invested more than 40% of its assets in the Securities, or (e) itself, or a fiduciary investing assets of or on behalf of, (i) an employee benefit plan (as defined in section 3(3) of ERISA) that is subject to Title I of ERISA; (ii) a plan (as defined in section 4975(e)(1) of the Internal Revenue Code of 1986, as amended) that is subject to Code section 4975; or (iii) an entity whose assets include assets of a plan described in (i) or (ii) above by reason of such a plan's investment in the entity under 29 C.F.R. §2510.3-101 as modified by Section 3(42) of ERISA or otherwise; (B) was not formed for the purpose of investing in the Warrants or other securities of the Issuer unless each of its beneficial owners is a QIB/QP who was not so formed; (C) will provide notice of applicable transfer restrictions to any subsequent transferee; and (D) is purchasing for its own account or for the accounts of one or more other persons each of whom meets all of the requirements of clauses (A) through (D); (ii) it is able to bear the economic risk of an investment in such Warrants and has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of acquiring such Warrants; and (iii) will provide notice of applicable transfer restrictions to any subsequent transferees;

- (v) if the QIB/QP's Warrants are to be held through DTC, the QIB/QP acknowledges that its interest in the Warrants will, at all times, be held only in book-entry form through its account at the direct participant in DTC that has been expressly authorized by the Issuer to hold interests in the Warrants (such DTC participant, an "Authorized Custodian"), and the QIB/QP understands that the relevant Authorized Custodian has agreed with the Issuer and its agents not to transfer any portion of the QIB/QP's interest in the Warrants to the account of any other person at the relevant Authorized Custodian, or to the account of any other participant in DTC, without the prior written consent of such Issuer or the prior written consent of a person authorized to act on such Issuer's behalf;
- (vi) that the QIB/QP is acquiring the Warrants purchased by it for its own account or for the accounts of one or more persons each of whom meet all of its requirements of paragraphs (iii) through (v) above; and
- (vii) that the QIB/QP acknowledges that it conducted and relied on its own research into such matters as it deemed necessary or advisable in connection with its purchase of the Warrants.

## **MERRILL LYNCH S.A.**

### **History and Business**

MLSA is a Luxembourg public limited liability company. MLSA was incorporated on 18th December, 1991 as a société anonyme for an unlimited period. MLSA's articles of incorporation were published in the Mémorial, Journal Officiel du Grand-Duché de Luxembourg, Recueil Spécial des Sociétés et Associations, C-No. 51 of 14th February, 1992. MLSA's articles of incorporation have not been amended since 2nd July, 2008. MLSA complies with the Luxembourg corporate governance regime. MLSA is wholly-owned beneficially by Merrill Lynch International Holdings Inc., a wholly-owned subsidiary of Merrill Lynch International which, in turn, is wholly-owned by ML&Co. MLSA has one subsidiary, ML SSG S.à.r.l, which is wholly-owned by MLSA.

The object of MLSA, as set out in Article 3 of its Articles of Incorporation, is to make loans and to grant financial assistance in any form whatsoever to companies which are part of its group. To that effect, MLSA may borrow money in whatever form and currency, issue bonds, debentures or other debt instruments in whatever form and in any manner whatsoever, and it may secure any of its borrowings by pledge or security of all or any of its property or income. MLSA complies with the corporate governance regime of Luxembourg.

MLSA also has the corporate power to take participating interests in any companies or undertakings in whatever form and carry out transactions pertaining to the administration, the management, the control and the development of any such participating interests.

MLSA's accounting year coincides with the calendar year.

### **Registered Office and Register of Commerce and Companies**

MLSA's registered office is at Ballade B2, 4, rue Albert Borschette, L-1246 Luxembourg, with telephone number +352 49 49 111 and it is registered with the Register of Commerce and Companies of Luxembourg under number B-39046.

The registered office of MLSA is located in Luxembourg where the directors hold all of their Board Meetings.

### **Principal Markets in which MLSA Competes**

The main markets in which MLSA sells securities are the Eurobond markets.

### **Directors**

The Directors of MLSA as of the date hereof are:

	<b>Title</b>
John G. Shane	Director
Marco Stauffacher	Director
Steen Foldberg	Director
Keith Pearson	Director
Paul Byrne	Director

The business address of the Directors of MLSA is Ballade B2, 4, rue Albert Borschette, L-1246 Luxembourg Grand Duchy of Luxembourg.

There are no potential conflicts of interest between any duties to MLSA and their private interests or other duties of the Directors of MLSA.

**SELECTED FINANCIAL DATA OF MERRILL LYNCH S.A.**

**BALANCE SHEET**

**31st December, 2007**  
**(expressed in U.S. Dollars)**

	<u>2007</u>	<u>2006</u>
<b>ASSETS</b>		
<b>FIXED ASSETS</b>		
Financial assets .....	13,531,833,367	7,078,779,618
<b>CURRENT ASSETS (LESS THAN ONE YEAR)</b>		
Amount owed by affiliated undertakings .....	652,595,391	707,517,240
Other debtors .....	2,383,864	539,601
Cash at banks .....	1,172,060	7,528,247
	<u>656,151,315</u>	<u>715,585,088</u>
	<u>14,187,984,682</u>	<u>7,794,364,706</u>
<b>LIABILITIES</b>		
<b>CAPITAL AND RESERVES</b>		
Subscribed capital .....	40,000	40,000
Reserves:		
Legal reserve .....	4,000	4,000
Other reserves .....	1,174,740	893,740
Profit brought forward .....	11,750,031	10,266,799
Profit for the financial year .....	2,989,516	1,764,232
	<u>15,958,287</u>	<u>12,968,771</u>
<b>PROVISIONS FOR LIABILITIES AND CHARGES</b>		
Provisions for taxation .....	1,954,929	3,846,366
<b>CREDITORS DUE AFTER MORE THAN ONE YEAR</b>		
Certificates .....	3,496,999,999	1,710,934,671
EEMTN issues .....	8,226,095,064	4,767,210,625
Subordinated convertible equity certificates .....	100,000,000	100,000,000
Fixed capital certificates .....	800,000,000	400,000,000
	<u>12,623,095,063</u>	<u>6,978,145,296</u>
<b>CREDITORS DUE WITHIN ONE YEAR</b>		
Amounts owed to affiliated undertakings .....	1,545,869,837	799,053,179
Other creditors .....	1,106,566	351,094
	<u>1,546,976,403</u>	<u>799,404,273</u>
	<u>14,187,984,682</u>	<u>7,794,364,706</u>



## PROFIT AND LOSS ACCOUNT

**Year ended 31st December, 2007**  
(expressed in U.S. Dollars)

	<u>2007</u>	<u>2006</u>
<b>EXPENSES</b>		
Interest and similar charges .....	1,081,802,906	339,212,352
Other operating charges .....	434,975	368,133
Tax on profit on ordinary activities.....	1,258,765	742,848
PROFIT FOR THE FINANCIAL YEAR.....	2,989,516	1,764,232
	<u>1,086,486,162</u>	<u>342,087,565</u>
<b>INCOME</b>		
Interest and similar income.....	1,085,871,143	341,793,516
Other operating income.....	615,019	249,049
	<u>1,086,486,162</u>	<u>342,087,565</u>

## CASH FLOW STATEMENT

	2007 US\$	2006 US\$
<b>PROFIT FOR THE YEAR</b>	2,989,516	1,764,232
Change in Receivables from Group Companies .....	54,921,849	(52,194,448)
Change in Other Receivables .....	(1,844,263)	8,773,716
Change in Payables to Group Companies .....	746,816,658	(446,002,828)
Change in Other Payables .....	(1,135,965)	2,191,961
<b>CASHFLOWS FROM FINANCING ACTIVITY</b>		
Change in Financial Assets .....	(6,543,053,749)	(1,799,401,428)
Change in Certificates .....	1,786,065,328	711,144,319
Change in EMTNs .....	3,458,884,439	1,580,284,211
Change in Fixed Capital Certificates .....	400,000,000	0
<b>Increase/Decrease in Cash .....</b>	<b>(6,356,187)</b>	<b>6,559,735</b>
<b>Cash at the beginning of the year .....</b>	<b>7,528,247</b>	<b>968,512</b>
<b>Cash at the end of the year .....</b>	<b>1,172,060</b>	<b>7,528,247</b>

## MERRILL LYNCH INTERNATIONAL & CO. C.V.

### Overview

Merrill Lynch International & Co. C.V. ("MLICo.") is a Netherlands Antilles limited partnership of unlimited duration which commenced operation on 1st August, 1975 under registered number 11705 in the Commercial Registry of the Chamber of Commerce in Curaçao. MLICo. complies with the Netherlands Antilles corporate governance regime. MLICo. engages primarily in the issuance of warrants and related financial instruments and the distribution of Merrill Lynch management funds world-wide (with the exception of North America) and other managed fund products. Merrill Lynch & Co., Inc. ("ML&Co.") is the ultimate parent of MLICo. as further described below under "Partners".

MLICo.'s registered office and business address is at Kaya W.F.G. (Jombi) Mensing 36, Curaçao, Netherlands Antilles. The telephone number of MLICo. is 00 (5999) 4611299.

The objects of MLICo. are set out in Article 3 of MLICo.'s Partnership Agreement, which is available as part of its constitutional documents as described in "General Information". There are no recent events which are to a material extent relevant to the evaluation of the MLICo.'s solvency. MLICo. has made no principal investments since 28th December, 2007 and the management body of MLICo. has made no firm commitments for any future principal investments, in each case, other than issuing W&C Securities and, if applicable, entering into related arrangements.

MLICo.'s current issued share capital comprises 118 fully paid up shares of a par value of US\$1,000, US\$50,000,000 fully paid up Series A Preferred Partnership Interest and US\$500,000,000 fully paid up Series B Preferred Partnership Interest and a capital contribution of US\$10,000.

### Partners

ML Cayman Holdings Inc., a corporation organised under the laws of the State of Delaware in the United States of America, is the General, Managing and Directing Partner ("**Directing Partner**") of MLICo.; ML Cayman Holdings Inc. also holds a Limited Partnership Interest in MLICo.; Merrill Lynch International Services Limited ("**Limited Partner**"), a Canadian company, is the other Limited Partner. Neither the Directing Partner nor the Limited Partner engages in any other activities other than being the Directing Partner or the Limited Partner of MLICo., as applicable.

The Directing Partner is vested with the power to direct the financial and business policies of the Partnership. The Directing Partner determines the use and disposition of surplus and net profits.

The Limited Partner is indirectly wholly owned by ML&Co.

The Directing Partner is wholly-owned by Merrill Lynch International Holdings Inc., which is wholly-owned by Merrill Lynch International Incorporated, which, in turn, is wholly-owned by ML&Co. Each of Merrill Lynch International Holdings Inc., Merrill Lynch International Incorporated and ML&Co. is a corporation organised under the laws of the State of Delaware in the United States of America.

The Director of the Directing Partner is:

Name	Title
Graham Seaton	Director

The above Director is a Merrill Lynch group employee.

The registered address of the Directing Partner and its Directors is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington DE 19801, United States of America.

The Directors of the Limited Partner are:

Name	Title
Marcelo Cosma	Director
Robert Mooney	Director
Gordon Weir	Director

Each of the above Directors is a Merrill Lynch group employee.

The registered address of the Limited Partner and its Directors is 129 Water Street, Box 38, Charlottetown, Prince Edward Island, Canada C1A 1A8.

There are no potential conflicts of interest between any duties to MLICo. of the Directing Partner and its private interest and/or other duties.

**SELECTED FINANCIAL DATA OF MERRILL LYNCH INTERNATIONAL & CO. C.V.**  
**PROFIT AND LOSS ACCOUNT**

**For the year ended 28th December, 2007 and 29th December, 2006**

	<b>2007</b> <b>US\$000s</b>	<b>2006</b> <b>US\$000s</b>
<b>TURNOVER .....</b>	<b>344,156</b>	<b>204,259</b>
Administrative expenses.....	<b>(277,549)</b>	<b>(166,549)</b>
<b>OPERATING PROFIT .....</b>	<b>66,607</b>	<b>37,710</b>
Profit on disposal of investments.....	<b>–</b>	<b>38</b>
Other interest receivable and similar income .....	<b>13,690</b>	<b>13,403</b>
Interest payable and similar charges.....	<b>(26,701)</b>	<b>(21,497)</b>
<b>PROFIT ON ORDINARY ACTIVITIES BEFORE TAXATION .....</b>	<b>53,596</b>	<b>29,654</b>
<b>TAX ON PROFIT ON ORDINARY ACTIVITIES .....</b>	<b>(1,585)</b>	<b>(904)</b>
<b>PROFIT ATTRIBUTABLE TO THE PARTNERS .....</b>	<b>52,011</b>	<b>28,750</b>

Turnover and operating profit derive wholly from continuing operations.

There were no recognised gains and losses for 2007 or 2006 other than those included in the profit and loss account.

## BALANCE SHEET

As at 28th December, 2007 and 29th December, 2006

	2007		2006	
	US\$000s	US\$000s	US\$000s	US\$000s
<b>FIXED ASSETS</b>				
Tangible fixed assets.....		140		160
Investments.....		14,736		14,736
		<u>14,876</u>		<u>14,896</u>
<b>CURRENT ASSETS</b>				
Long inventory positions.....	76,093,800		29,715,335	
Trade debtors.....	14,746,940		12,327,178	
Other debtors and prepayments .....	583,430		83,998	
Cash at bank and in hand.....	500		620	
	<u>91,424,670</u>		<u>42,127,131</u>	
<b>CREDITORS: amounts falling due within one year</b>				
Short inventory positions.....	89,975,531		40,518,733	
Trade creditors.....	788,501		1,389,563	
Other creditors including tax and social security .....	42,254		152,494	
	<u>90,806,286</u>		<u>42,060,790</u>	
<b>NET CURRENT ASSETS.....</b>		<u>618,384</u>		<u>66,341</u>
<b>TOTAL ASSETS LESS CURRENT LIABILITIES .....</b>		<u>633,260</u>		<u>81,237</u>
<b>CREDITORS: amounts falling due after more than one year .....</b>		<u>(633,260)</u>		<u>(81,237)</u>
<b>NET ASSETS .....</b>		<u>-</u>		<u>-</u>
Partners' capital account .....		-		-
Partners' income account .....		-		-
<b>PARTNERS' FUNDS.....</b>		<u>-</u>		<u>-</u>

## CASH FLOW STATEMENT

For the year ended 28th December, 2007 and 29th December 2006

	2007 US\$000s	2006 US\$000s
<b>Reconciliation of operating profit to net cash inflow from operating cash flows</b>		
Operating profit.....	66,607	37,710
Depreciation and amortisation .....	145	75
(Increase)/decrease in long inventory .....	(46,378,465)	18,083,670
(Increase) in debtors* .....	(2,905,504)	(951,955)
Decrease/(increase) in short inventory.....	49,456,798	(18,091,021)
(Decrease)/increase in creditors* .....	(743,394)	886,946
Increase in creditors due after more than one year* .....	604,034	92,173
<b>Net cash inflow from operating activities .....</b>	<b>100,221</b>	<b>57,598</b>
Net cash inflow from operating activities .....	100,221	57,598
Capital expenditure and financial investments .....	(125)	170
Financing .....	(100,216)	(57,462)
<b>(Decrease)/increase in cash.....</b>	<b>(120)</b>	<b>306</b>

\* Excluded from increases in debtors and creditors are any movements that do not relate to operating activities.

## **MERRILL LYNCH & CO., INC.**

ML&Co. is a holding company and together with its subsidiaries, provides investment, financing, insurance and related services to individuals and institutions on a global basis through its broker, dealer, banking and other financial services subsidiaries. Its principal subsidiaries include Merrill Lynch, Pierce, Fenner & Smith Incorporated, Merrill Lynch International, Merrill Lynch Government Securities, Inc., Merrill Lynch Capital Services, Inc., Merrill Lynch Bank USA, Merrill Lynch Bank & Trust Co., FSB, Merrill Lynch International Bank Limited, Merrill Lynch Mortgage Capital, Inc., Merrill Lynch Japan Securities Co., Ltd., Merrill Lynch Derivative Products, AG and ML IBK Positions Inc. The services, which ML&Co. and its principal subsidiaries provide include<sup>1</sup>:

- Securities brokerage, trading, and underwriting;
- Investment banking, strategic advisory services (including mergers and acquisitions) and other corporate finance activities;
- Wealth management products and services, including financial, retirement and generational planning;
- Investment management and advisory and related record-keeping services;
- Origination, brokerage, dealer and related activities in swaps, options, forwards, exchange-traded futures, other derivatives, commodities and foreign exchange products;
- Securities clearance, settlement financing services and prime brokerage;
- Private equity and other principal investing activities;
- Proprietary trading of securities, derivatives and loans;
- Banking, trust and lending services, including deposit-taking, consumer and commercial lending, including mortgage loans, and related services;
- Insurance and annuities sales; and
- Research across the following disciplines: global fundamental equity research, global fixed income and equity-linked research, global economics and foreign exchange research and global investment strategy.

ML&Co.'s accounting year for 2007 ended on 28th December, 2007.

ML&Co. was incorporated under the laws of the State of Delaware, U.S.A., on 27th March, 1973 with file number 0790151. The principal executive office of ML&Co. is located at 4 World Financial Center, New York, New York 10080, United States of America, with telephone number +1 212 449 1000. ML&Co.'s registered office in the State of Delaware is c/o The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, United States of America.

ML&Co. complies with the United States of America's corporate governance regime.

Information provided on pages 20-21 (Introduction) and page 168 (Corporate Governance) of ML&Co.'s 2007 Annual Report, is current as at the date of this Base Prospectus.

### **Recent Developments**

#### *Bloomberg, L.P. and Financial Data Services*

On 17th July, 2008, Merrill Lynch<sup>2</sup> announced that it had completed the sale of its 20 per cent. ownership stake in Bloomberg, L.P. to Bloomberg Inc., for approximately US\$4.4 billion, and as part of this transaction had entered into a long-term service agreement. As consideration for the sale of its interest in Bloomberg L.P., Merrill Lynch received notes issued by Bloomberg Inc. (the general partner and owner of substantially all of Bloomberg L.P.) with an aggregate face amount of approximately US\$4.3 billion and cash in the amount of approximately US\$110 million. The notes represent senior unsecured obligations of Bloomberg

<sup>1</sup> ML&Co.'s corporate purpose can be found on the second page of ML&Co.'s Restated Certificate of Incorporation dated 30th July, 2008.

<sup>2</sup> Unless the context otherwise requires, the term "Merrill Lynch" means ML&Co. and its consolidated subsidiaries.



Inc. and consist of fixed-rate and floating-rate tranches with maturities of 10 to 15 years. The notes accrue interest at market rates.

Merrill Lynch has also announced that it was in negotiations and had signed a non-binding letter of intent to sell a controlling interest in Financial Data Services, Inc. ("FDS"), based on an enterprise value for FDS in excess of US\$3.5 billion. FDS is currently a wholly-owned subsidiary of Merrill Lynch and is a provider of administrative functions for mutual funds, retail banking products and other services within Global Wealth Management. The expected sale of FDS is currently subject to a non-binding letter of intent and there can be no assurance that a definitive agreement will be completed with the current purchasers, or if a sale is consummated, that it will be on the financial terms described above. Merrill Lynch intends to provide debt financing for the FDS transaction on a commercially reasonable basis.

#### *CDO Sale*

On 28th July, 2008, Merrill Lynch agreed to sell US\$30.6 billion gross notional amount of U.S. super senior ABS CDOs (the "**Portfolio**") to an affiliate of Lone Star Funds ("**Lone Star**") for a purchase price of US\$6.7 billion. At the end of the second quarter of 2008, these CDOs were carried at US\$11.1 billion, and in connection with this sale Merrill Lynch will record a pre-tax write-down of US\$4.4 billion in the third quarter of 2008.

On a pro forma basis, this sale will reduce Merrill Lynch's aggregate U.S. super senior ABS CDO long exposures from US\$19.9 billion at 27th June, 2008 to US\$8.8 billion. The pro forma remaining US\$8.8 billion super senior long exposure is hedged with an aggregate of US\$7.2 billion of short exposure, of which US\$6.0 billion are with highly-rated non-monoline counterparties. The remaining net exposure will be US\$1.6 billion.

Merrill Lynch will provide financing to the purchaser for approximately 75 per cent. of the purchase price. The recourse on this loan will be limited to the assets of the purchaser, which will consist solely of the Portfolio. All cash flows and distributions from the Portfolio (including sale proceeds) will be applied in accordance with a specified priority of payments. The loan will be carried at fair value.

Events of default under the loan are customary events of default, including failure to pay interest when due and failure to pay principal at maturity. The transaction is expected to close within 60 days.

#### *Termination of Monoline Hedges*

In addition to the CDO sale referenced above, Merrill Lynch also agreed to terminate all of its CDO-related hedges with XL Capital Assurance ("**XL**") and is in the process of negotiating settlements on certain contracts with other monoline counterparties. These short positions were the hedges on long CDO positions that are part of the announced sale.

Merrill Lynch executed an agreement to terminate all of its CDO-related hedges with XL. The transaction is expected to close in August 2008. When the transaction closes, all of Merrill Lynch's CDO-related hedges with XL will be terminated in exchange for an upfront cash payment to Merrill Lynch of US\$500 million. These hedges had a carrying value of approximately US\$1.0 billion at 27th June, 2008. As a result of this transaction, Merrill Lynch will record a pre-tax loss of US\$528 million during the third quarter of 2008.

Merrill Lynch is also in the process of negotiating settlements on certain other contracts relating to CDO hedges with monoline guarantors. If Merrill Lynch were to receive no payments in connection with the settlement of these hedges, the maximum pre-tax loss Merrill Lynch expects to record would be their current carrying value, US\$0.8 billion.

#### *Common Stock Offering and Early Conversion of Mandatory Convertible Preferred*

On 28th July, 2008, Merrill Lynch announced a public offering of 437,000,000 shares of common stock (including the exercise of the over-allotment option) at a price of US\$22.50 per share, for an aggregate amount of US\$9.8 billion. On 1st August, 2008, Merrill Lynch issued 368,273,954 shares of common stock as part of the announced offering. An additional 68,726,046 shares of common stock will be issued to Temasek, Merrill Lynch's largest shareholder, upon obtaining regulatory approvals. Temasek agreed to purchase US\$3.4 billion of common stock in the offering. In addition, Merrill Lynch's executive management team purchased approximately 750 thousand shares of common stock in the offering.

In satisfaction of Merrill Lynch's obligations under the reset provisions contained in the investment agreement with Temasek, Merrill Lynch has agreed to pay Temasek US\$2.5 billion, 100% of which will be invested in the offering at the public offering price without any future reset protection. The US\$2.5 billion payment will be recorded as an expense in the Condensed Consolidated Statement of (Loss)/Earnings during the third quarter of 2008.

In addition, holders of US\$4.9 billion of the US\$6.6 billion of outstanding mandatory convertible preferred stock have agreed to exchange their preferred stock for approximately 177 million shares of common stock, plus US\$65 million in cash. Holders of the remaining US\$1.7 billion of outstanding mandatory convertible preferred stock have agreed to exchange their preferred stock for new mandatory convertible preferred stock. The reset feature for all securities exchanged has been eliminated. In connection with the reset features of the US\$6.6 billion of outstanding preferred stock, Merrill Lynch will record additional preferred dividends of US\$2.3 billion in the third quarter of 2008.

*Proposed Acquisition of Merrill Lynch & Co., Inc. by Bank of America*

As set out in the Current Report, on 14th September 2008 ML&Co. and Bank of America Corporation ("**Bank of America**") entered into an Agreement and Plan of Merger. Under the terms of the transaction, it is anticipated that Bank of America will exchange 0.8595 shares of Bank of America common stock for each share of ML&Co. common stock. The transaction, which is expected to close in the first quarter of 2009, has been approved by directors of both Bank of America and ML&Co., but is subject to shareholder votes at both companies and standard regulatory approvals.

Bank of America stock (NYSE: BAC) is a component of the Dow Jones Industrial Average and is listed on the New York Stock Exchange. The address of Bank of America's website is [www.bankofamerica.com](http://www.bankofamerica.com). Bank of America is subject to the informational requirements of the Exchange Act and, in accordance therewith, files reports and other information with the SEC. Such reports and other information can be accessed at <http://www.sec.gov>. Prospective purchasers of Securities are referred to such websites for reference only, and the information with respect to Bank of America on such websites is not included or incorporated by reference in this Base Prospectus. None of the Issuers, ML&Co. or any Dealer has taken any steps to make such information available to prospective purchasers of Securities or to investigate the accuracy or completeness of any such information or any information in the public domain with respect to Bank of America.

## SELECTED FINANCIAL DATA OF MERRILL LYNCH & CO., INC.

	Six Months Ended		Year Ended Last Friday in December				
	27th June, 2008	29th June, 2007	2007 (52 weeks)	2006 (52 weeks)	2005 (52 weeks)	2004 (52 weeks)	2003 (52 weeks)
<i>(dollars in millions, except per share amounts)</i>							
<b>Results of Operations</b>							
Total Revenues .....	\$ 18,742	\$ 44,541	\$ 62,675	\$ 69,352	\$ 46,848	\$ 31,916	\$ 27,392
Less Interest Expense .....	17,924	25,479	51,425	35,571	21,571	10,416	7,844
Revenues, Net of Interest Expense .....	818	19,062	11,250	33,781	25,277	21,500	19,548
Non-Interest Expenses .....	12,230	13,335	24,081	23,971	18,516	15,992	14,474
Pre-Tax (Loss) /Earnings from Continuing Operations .....	(11,412)	5,727	(12,831)	9,810	6,761	5,508	5,074
Income Tax (Benefit)/Expense .....	(4,809)	1,687	(4,194)	2,713	1,946	1,244	1,341
Net (Loss)/Earnings from Continuing Operations .....	\$ (6,603)	\$ 4,040	\$ (8,637)	\$ 7,097	\$ 4,815	\$ 4,264	\$ 3,733
Pre-Tax Earnings from Discontinued Operations .....	(57)	391	1,397	616	470	327	146
Income Tax Expense .....	(44)	134	537	214	169	155	43
Net Earnings from Discontinued Operations .....	(13)	257	860	402	301	172	103
Net (Loss)/Earnings Applicable to Common Stockholders <sup>2</sup> .....	\$ (7,027)	\$ 4,173	\$ (8,047)	\$ 7,311	\$ 5,046	\$ 4,395	\$ 3,797
<b>Financial Position</b>							
Total Assets .....	\$ 966,210	\$ 1,076,324	\$ 1,020,050	\$ 841,299	\$ 681,015	\$ 628,098	\$ 480,233
Short-Term Borrowings <sup>3</sup> .....	\$ 282,711	\$ 398,759	\$ 316,545	\$ 284,226	\$ 221,389	\$ 180,058	\$ 111,727
Deposits .....	\$ 100,458	\$ 82,801	\$ 103,987	\$ 84,124	\$ 80,016	\$ 79,746	\$ 79,457
Long-Term Borrowings .....	\$ 270,436	\$ 226,016	\$ 260,973	\$ 181,400	\$ 132,409	\$ 119,513	\$ 85,178
Junior Subordinated Notes (related to trust preferred securities) .....	\$ 5,193	\$ 4,403	\$ 5,154	\$ 3,813	\$ 3,092	\$ 3,092	\$ 3,203
Total Stockholders' Equity .....	\$ 34,778	\$ 42,191	\$ 31,932	\$ 39,038	\$ 35,600	\$ 31,370	\$ 28,884
<b>Common Share Data</b> <i>(in thousands, except per share amounts)</i> (Loss)/Earnings Per Share:							
Basic (Loss)/Earnings Per Common Share from Continuing Operations .....	\$ (7.17)	\$ 4.67	\$ (10.73)	\$ 7.96	\$ 5.32	\$ 4.62	\$ 4.10
Basic Earnings Per Common Share from Discontinued Operations .....	(0.01)	0.31	1.04	0.46	0.34	0.19	0.12
Basic (Loss)/Earnings Per Common Share .....	\$ (7.18)	\$ 4.98	\$ (9.69)	\$ 8.42	\$ 5.66	\$ 4.81	\$ 4.22
Diluted (Loss)/Earnings Per Common Share from Continuing Operations .....	\$ (7.17)	\$ 4.22	\$ (10.73)	\$ 7.17	\$ 4.85	\$ 4.21	\$ 3.77
Diluted Earnings Per Common Share from Discontinued Operations .....	(0.01)	0.28	1.04	0.42	0.31	0.17	0.10
Diluted (Loss)/Earnings Per Common Share .....	\$ (7.18)	\$ 4.50	\$ (9.69)	\$ 7.59	\$ 5.16	\$ 4.38	\$ 3.87
Weighted-Average Shares Outstanding:							
Basic .....	978,463	837,551	830,415	868,095	890,744	912,935	900,711
Diluted .....	978,463	926,778	830,415	962,962	977,736	1,003,779	980,947
Shares Outstanding at Year-End .....	985,376	862,559	939,112	867,972	919,201	931,826	949,907
Book Value Per Share .....	\$ 21.43	\$ 43.55	\$ 29.34	\$ 41.35	\$ 35.82	\$ 32.99	\$ 29.96
Dividends Paid Per Share .....	\$ 0.70	\$ 0.70	\$ 1.40	\$ 1.00	\$ 0.76	\$ 0.64	\$ 0.64
<b>Financial Ratios</b>							
Pre-Tax Profit Margin from Continuing Operations .....	N/M	30.0%	N/M	29.0%	26.7%	25.6%	26.0%
Common Dividend Payout Ratio .....	N/M	14.1%	N/M	11.9%	13.4%	13.3%	15.2%
Return on Average Assets .....	N/M	0.4%	N/M	0.9%	0.7%	0.8%	0.8%
Return on Average Common Stockholders' Equity from Continuing Operations .....	N/M	22.8%	N/M	20.1%	15.0%	13.8%	14.4%
<b>Other Statistics</b>							
Full-Time Employees:							
U.S. ....	44,800	47,700	48,700	43,700	43,200	40,200	38,200
Non-U.S. ....	15,200	14,200	15,500	12,500	11,400	10,400	9,900
Total <sup>4</sup> .....	60,000	61,900	64,200	56,200	54,600	50,600	48,100
Financial Advisors .....	16,690	16,200	16,740	15,880	15,160	14,140	13,530
Client Assets <i>(dollars in billions)</i> .....	\$ 1,605	\$ 1,703	\$ 1,751	\$ 1,619	\$ 1,458	\$ 1,359	\$ 1,267

Note: Certain prior period amounts have been reclassified to conform to current period presentation.

N/M = Not Meaningful

<sup>2</sup> Net (loss)/earnings less preferred stock dividends.

<sup>3</sup> Consists of payables under repurchase agreements and securities loaned transactions and short-term borrowings.

<sup>4</sup> Excludes 2,800, 300, 700, 100, 200, 100 and 200 full-time employees on salary continuation severance at the end of 2Q-08, 2Q-07, year-end 2007, 2006, 2005, 2004 and 2003, respectively.

## Stockholders' Equity

	28th December 2007	29th December 2006
	<i>(dollars in millions, except per share amounts)</i>	
<b>Preferred Stockholders' Equity</b>		
<i>(liquidation preference of US\$30,000 per share; issued: 2007 - 155,000 shares; 2006 - 105,000 shares;</i>		
<i>liquidation preference of US\$1,000 per share; issued: 2007 - 115,000 shares .....</i>	\$ 4,383	\$ 3,145
<b>Common Stockholders' Equity</b>		
Shares exchangeable into common stock.....	39	39
Common stock (par value US\$1.33 1/3 per share; authorized: 3,000,000,000 shares; issued: 2007 - 1,354,309,819 shares; 2006 - 1,215,381,006 shares) .....	1,805	1,620
Paid-in capital .....	27,163	18,919
Accumulated other comprehensive loss (net of tax) .....	(1,791)	(784)
Retained earnings.....	23,737	33,217
	<u>50,953</u>	<u>53,011</u>
Less: Treasury stock, at cost (2007 - 418,270,289 shares; 2006 - 350,697,271 shares).....	23,404	17,118
<b>Total Common Stockholders' Equity .....</b>	<u>27,549</u>	<u>35,893</u>
<b>Total Stockholders' Equity .....</b>	<u>\$ 31,932</u>	<u>\$ 39,038</u>

## **MANAGEMENT - MERRILL LYNCH & CO., INC.**

### **Directors**

The directors of ML&Co. and their principal occupations as of the date hereof are set forth in the following table:

<b>Name</b>	<b>Principal Occupation</b>
John A. Thain	Chairman of the Board and Chief Executive Officer of ML&Co.
Armando M. Codina	President and Chief Executive Officer of Flagler Development Group
Virgis W. Colbert	Senior Adviser to Miller Brewing Company
John D. Finnegan	Chairman of the Board, President and Chief Executive Officer of The Chubb Corporation
Judith Mayhew Jonas <sup>1</sup>	Corporate Director of ML&Co.
Aulana L. Peters	Corporate Director of ML&Co.
Joseph W. Prueher <sup>1</sup>	Corporate Director of ML&Co.
Ann N. Reese <sup>1</sup>	Co-Founder and Co-Executive Director of the Center for Adoption Policy
Charles O. Rossotti <sup>1</sup>	Senior Advisor to The Carlyle Group
Carol T. Christ	President, Smith College

<sup>1</sup> Judith Mayhew Jonas, Joseph W. Prueher, Ann N. Reese and Charles O. Rossotti comprise the members of the Audit Committee.

The business address of each of the directors of ML&Co. is 4 World Financial Center, New York, New York 10080, United States of America.

There are no potential conflicts of interest between any duties to ML&Co. and their private interests or other duties of the directors of ML&Co.

Information regarding certain relationships and related transactions is set out in a section entitled "Other Matters—Certain Relationships and Transactions" on page 60 of the Proxy Statement, which is incorporated by reference herein.

## **EXECUTIVE OFFICERS - MERRILL LYNCH & CO., INC.**

The following persons, all of whom are full-time employees of ML&Co., hold the offices indicated in the following table as of the date hereof:

<b>Name</b>	<b>Office</b>
John A. Thain	Chairman of the Board and Chief Executive Officer
Rosemary T. Berkery	Vice Chairman, Executive Vice President and General Counsel
Nelson Chai	Executive Vice President and Chief Financial Officer
Gregory J. Fleming	President and Chief Operating Officer
Robert J. McCann	Executive Vice President and Vice Chairman and President of Global Private Client (now Global Wealth Management)
Thomas J. Sanzone	Executive Vice President and Chief Administrative Officer
Thomas K. Montag	Executive Vice President and Head of Global Sales and Trading

The business address of each of the officers of ML&Co. is 4 World Financial Center, New York, New York 10080, United States of America.

There are no potential conflicts of interest between any duties to ML&Co. and their private interests or other duties of the executive officers of ML&Co.

Information regarding certain relationships and related transactions is set out in a section entitled "Other Matters—Certain Relationships and Transactions" on page 60 of the Proxy Statement, which is incorporated by reference herein.

## **ERISA MATTERS**

**Any discussion of United States federal tax issues set forth in this Base Prospectus was written in connection with the promotion and marketing of the Securities by MLSA, MLICo., ML&Co., the Dealers and the Managers (as applicable). Such discussion was not intended or written to be legal or tax advice to any person and was not intended or written to be used, and it cannot be used, by any person for the purpose of avoiding any United States federal tax penalties that may be imposed on such person. Each person considering an investment in the Securities should seek advice based on its particular circumstances from an independent tax advisor.**

ML&Co. and certain affiliates of ML&Co. may each be considered a "party in interest" within the meaning of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or a "disqualified person" within the meaning of the Code with respect to many employee benefit plans and individual retirement accounts, Keoghs and other plans subject to Section 4975 of the Code. Certain transactions between an employee benefit plan and a party in interest or disqualified person may result in "prohibited transactions" within the meaning of ERISA and the Code, unless such transactions are affected pursuant to an applicable exemption. Any employee benefit plan or other entity subject to such provisions of ERISA or the Code proposing to invest in the Securities should consult with its legal counsel.

## **TAXATION**

The following comments are of a general nature, are based on the Issuers' understanding of current law and practice and are included in this document solely for information purposes. These comments are not intended to be, nor should they be regarded as, legal or tax advice. The precise tax treatment of a holder of an instrument that is either a note ("Notes"), warrant ("Warrants") or certificate ("Certificates") will depend for each issue on the terms of the Notes, Warrants or Certificates, as specified in the Terms and Conditions of the Notes or the Terms and Conditions of the W&C Securities (as applicable), as amended and supplemented by the applicable Final Terms under the law and practice at the relevant time. Prospective holders of Notes, Warrants or Certificates should consult their own tax advisers in all relevant jurisdictions to obtain advice about their particular tax treatment in relation to such Notes, Warrants or Certificates.

### **UNITED STATES FEDERAL INCOME TAXATION**

**TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE U.S. INTERNAL REVENUE SERVICE (THE IRS), WE INFORM YOU THAT ANY TAX DISCUSSION HEREIN WAS NOT WRITTEN AND IS NOT INTENDED TO BE USED AND CANNOT BE USED BY ANY TAXPAYER FOR PURPOSES OF AVOIDING U.S. FEDERAL INCOME TAX PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER. ANY SUCH TAX DISCUSSION WAS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTIONS DESCRIBED HEREIN. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISER.**

The following summary describes certain U.S. federal income tax considerations that may be relevant to a U.S. holder (as defined below) who purchases a Security, but is not purported to be a complete analysis of all potential tax effects. This summary is based upon the Internal Revenue Code of 1986 (the "Code"); existing and proposed regulations promulgated thereunder, and published rulings and court decisions, all as in effect and existing on the date of this Base Prospectus and all of which are subject to change at any time with retrospective or prospective effect. The rules governing the U.S. federal income taxation of option transactions and other derivative financial instruments are complex and depend on a taxpayer's particular circumstances. Accordingly, this summary does not purport to be a comprehensive description of all of the tax considerations that may be relevant to any particular investor in a Security. In particular, this summary deals only with holders of Securities who purchase in the initial offering at the applicable issue price and in whose hands the Securities, or the stock, debt, commodity or other property underlying the Securities would be capital assets for U.S. federal income tax purposes. In addition, this discussion assumes that the Securities that are treated as options for U.S. federal income tax purposes, when issued, are not significantly "in-the-money".

This summary also does not discuss the U.S. federal income tax treatment of a U.S. holder who is a member of a class of holders subject to special rules, such as a dealer in securities, commodities or derivative financial instruments; a trader in securities, commodities or derivative financial instruments that elects to use a mark-to-market method of accounting for securities or commodities holdings; a bank; a life insurance company; a tax-exempt organisation; entities that are treated for U.S. federal income tax purposes as partnerships or other pass-through entities; an investor who purchases a Security with respect to stock in a company that is treated as a passive foreign investment company ("PFIC") for U.S. federal income tax purposes; an investor who purchases a Security and holds any other position (whether long or short, direct or indirect) in any asset underlying such option; an investor who purchases a Security that is part of a hedging transaction or that has been hedged against currency risk; an investor who purchases a Security that is part of a straddle or conversion transaction for U.S. federal income tax purposes; and an investor whose functional currency for U.S. federal income tax purposes is not the U.S. dollar.

As a consequence of the foregoing, it should be particularly noted that this summary does not address the special tax considerations that apply to an investment in a combination of Securities with respect to the same underlying assets. Further, this summary does not address alternative minimum tax consequences or the indirect effects on the holders of equity interests in a holder of a Security.



Any of the foregoing circumstances might substantially alter the tax consequences described below, and, in some instances, may require specific identification of positions in the relevant Security before the close of the day on which they are acquired. For example, if the straddle rules were to apply, a U.S. holder of a Security might be required to (i) recognise all or a portion of any gain on such Security that would otherwise be long-term or short-term capital gain, as ordinary income or, if applicable, short-term capital gain, (ii) defer all, or a portion, of any loss realised upon the sale, exchange, exercise, cancellation or lapse of such Security and (iii) capitalise any interest or carrying charges incurred by such U.S. holder with respect to such Security.

This summary does not address the material U.S. federal income tax consequences of every type of Security which may be issued under the Program. Additional U.S. federal income tax consequences, if any, applicable to a particular Security will be set forth in the applicable Final Terms.

**The rules governing the taxation of option transactions and derivative financial instruments are complex and depend on a taxpayer's particular circumstances. U.S. holders are strongly urged to consult their tax advisors concerning the U.S. federal, state, local, foreign and other national tax consequences of the ownership and disposition of Securities in their particular circumstances. U.S. holders should also consult their tax advisors as to the possibility of changes of law affecting taxation of derivative financial instruments with contingent payments, including prepaid forward contracts. Prospective investors should consult their tax advisors regarding the U.S. federal, state, local and foreign tax consequences of acquiring, owning and disposing of the Securities in light of such investor's own circumstances, including such investor's status as a U.S. holder or non-U.S. holder (as defined below), as well as any other estate, gift, or other tax consequences that may arise under the laws of any state, local, foreign or other taxing jurisdiction.**

For purposes of this discussion, a "U.S. holder" means a beneficial owner of a Security that is:

- (i) a citizen or individual resident of the United States, as defined in Section 7701(b) of the Code,
- (ii) a corporation, including any entity treated as a corporation for U.S. federal income tax purposes, created or organised in or under the laws of the United States, any State thereof or the District of Columbia;
- (iii) an estate the income of which is subject to U.S. federal income tax without regard to its source;
- (iv) a trust if (x) a court within the United States is able to exercise primary supervision over the administration of the trust, and one or more United States persons have the authority to control all substantial decisions of the trust, or (y) such trust has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a United States person;
- (v) otherwise subject to U.S. federal income taxation on a net income basis in respect of the Security.

A "non-U.S. holder" is a beneficial owner of a Security that is a non-resident alien individual or a foreign corporation. If a partnership holds a Security, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. Partners in partnerships holding a Security should consult their tax advisors regarding the U.S. federal income tax consequences of acquiring, owning, exchanging and disposing of the Securities.

The Issuer generally intends to treat Notes issued under the Programme as debt, unless otherwise indicated in the applicable Final Terms. Certain Notes, however, such as Index Linked Notes, may be treated as equity or a derivative financial instrument for U.S. federal income tax purposes. The tax treatment of Notes to which a treatment other than as debt may apply will be discussed in the applicable Final Terms. The Final Terms for an issue of Notes may specify with respect to the issue of Notes to which it relates (and where relevant) the potential U.S. federal income tax consequences of the purchase, ownership, disposition of the Notes.

Holders may be subject to a variety of U.S. tax consequences depending on the subject and the terms of the Notes. Holders should consult their own advisers about the tax consequences of purchasing Notes, particularly whether the Notes being acquired could be treated for U.S. tax purposes as debt instruments or as another type of financial instrument.

## Classification of the Securities

Depending on the terms of a Security, such Security could be treated as one or more of the following: (i) a prepaid forward contract (which, depending on the terms, may be subject to embedded options), (ii) a combination of a loan and a prepaid forward contract, (iii) an outright or constructive ownership interest in the property underlying such Security, or (iv) a debt instrument with or without contingent payments. Additional U.S. federal income tax consequences applicable to a particular issuance of Securities will be set forth in the applicable Final Terms.

No ruling is being requested from the IRS with respect to the Securities, and the treatment of the Securities described below is not binding on the IRS or the courts. As a result, significant aspects of the U.S. federal income tax consequences of an investment in the Securities are uncertain.

## U.S. Holders

### *Debt*

The following is a summary of the principal U.S. federal income tax consequences of the ownership of Securities treated as debt for U.S. federal tax purposes.

### *Payment of Interest*

Interest on a Security, whether payable in U.S. dollars or a currency, composite currency or basket of currencies other than U.S. dollars ("foreign currency" interest on a "**Foreign Currency Security**"), other than interest on a "**Discount Security**" that is not "qualified stated interest" (each as defined below under "Original Issue Discount — General"), will be taxable to a U.S. holder as ordinary income at the time it is received or accrued, depending on the U.S. holder's method of accounting for tax purposes. Interest paid by the Issuer on the Securities and OID, if any, accrued with respect to the Securities (as described below under "Original Issue Discount") generally will constitute income from sources outside the United States subject to the rules regarding the foreign tax credit allowable to a U.S. holder. Prospective purchasers should consult their tax advisers concerning the foreign tax credit implications of any payment of foreign taxes.

### *Original Issue Discount*

#### *General*

The following is a summary of the principal U.S. federal income tax consequences of the ownership of Securities issued with original issue discount ("**OID**"). The following summary does not discuss Securities that are characterized as contingent payment debt instruments for U.S. federal income tax purposes. The tax treatment of any Securities treated as contingent payment debt instruments will be set forth in the applicable Final Terms for such Securities.

A Security, other than a Security with a term of one year or less, will be treated as issued with OID (a "**Discount Security**") if the excess of the Security's "stated redemption price at maturity" over its issue price is equal to or more than a *de minimis* amount (0.25 per cent. of the Security's stated redemption price at maturity multiplied by the number of complete years to its maturity). Generally, the issue price of a Security will be the first price at which a substantial amount of Securities included in the issue of which the Security is a part is sold to persons other than bond houses, brokers, or similar persons or organisations acting in the capacity of underwriters, placement agents, or wholesalers. The stated redemption price at maturity of a Security is the total of all payments provided by the Security that are not payments of "qualified stated interest." A qualified stated interest payment is generally any one of a series of stated interest payments on a Security that are unconditionally payable at least annually at a single fixed rate, or a variable rate (as described below under "Variable Interest Rate Securities"), applied to the outstanding principal amount of the Security. Solely for the purposes of determining whether a Security has OID, the Issuer will be deemed to exercise any call option that has the effect of decreasing the yield on the Security, and the U.S. holder will be deemed to exercise any put option that has the effect of increasing the yield on the Security. If a Security has *de minimis* OID, a U.S. holder must include the *de minimis* amount in income as stated principal payments are made on the Security, unless the U.S. holder makes the election to treat all interest as OID.

U.S. holders of Discount Securities must include OID in income calculated on a constant-yield method before the receipt of cash attributable to the income, and generally will have to include in income

increasingly greater amounts of OID over the life of the Discount Securities. The amount of OID includible in income by a U.S. holder of Discount Securities is the sum of the daily portions of OID with respect to the Discount Securities for each day during the taxable year or portion of the taxable year on which the U.S. holder holds the Discount Securities. The amount of OID allocable to an accrual period (and pro rata to every day in the accrual period) equals the excess of (a) the product of the Discount Security's adjusted issue price at the beginning of the accrual period and the Discount Security's yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period) over (b) the sum of the payments of qualified stated interest on the Security allocable to the accrual period. The "adjusted issue price" of a Discount Security at the beginning of any accrual period is the issue price of the Security increased by (x) the amount of accrued OID for each prior accrual period and decreased by (y) the amount of any payments previously made on the Security that were not qualified stated interest payments.

#### *Acquisition Premium*

A U.S. holder that purchases a Discount Security for an amount less than or equal to the sum of all amounts payable on the Security after the purchase date, other than payments of qualified stated interest, but in excess of its adjusted issue price and that does not make the election to treat all interest as OID, is permitted to reduce the daily portions of OID by a fraction, the numerator of which is the excess of the U.S. holder's adjusted basis in the Discount Security immediately after its purchase over the Discount Security's adjusted issue price, and the denominator of which is the excess of the sum of all amounts payable on the Security after the purchase date, other than payments of qualified stated interest, over the Discount Security's adjusted issue price.

#### *Market Discount*

A Security, other than a Security with a term of one year or less, generally will be treated as purchased at a market discount if the Security's stated redemption price at maturity or, in the case of a Discount Security, the Security's "revised issue price", exceeds the amount for which the U.S. holder purchased the Security by at least 0.25 per cent. of the Security's stated redemption price at maturity or revised issue price, respectively, multiplied by the number of complete years to the Security's maturity. If this excess is not sufficient to cause the Security to be treated as purchased at a market discount, then the excess constitutes "*de minimis* market discount". For this purpose, the "revised issue price" of a Security generally equals its issue price, increased by the amount of any OID that has accrued on the Security and decreased by the amount of any payments previously made on the Security that were not qualified stated interest payments.

#### *Variable Interest Rate Securities*

Securities that provide for interest at variable rates ("**Variable Interest Rate Securities**") generally will bear interest at a "qualified floating rate" and thus will be treated as "variable rate debt instruments" under Treasury Regulations governing accrual of OID. A Variable Interest Rate Security will qualify as a "variable rate debt instrument" if (a) its issue price does not exceed the total noncontingent principal payments due under the Variable Interest Rate Security by more than a specified *de minimis* amount and (b) it provides for stated interest, paid or compounded at least annually, at current values of (i) one or more qualified floating rates, (ii) a single fixed rate and one or more qualified floating rates, (iii) a single objective rate, or (iv) a single fixed rate and a single objective rate that is a qualified inverse floating rate.

A "qualified floating rate" is any variable rate where variations in the value of the rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in the currency in which the Variable Interest Rate Security is denominated. A fixed multiple of a qualified floating rate will constitute a qualified floating rate only if the multiple is greater than 0.65 but not more than 1.35, whether or not a variable rate is increased or decreased by a fixed rate. A variable rate that would otherwise constitute a qualified floating rate but which is subject to one or more restrictions such as a maximum numerical limitation (i.e., a cap) or a minimum numerical limitation (i.e., a floor) may, under certain circumstances, fail to be treated as a qualified floating rate unless the cap or floor is fixed throughout the term of the Security.

An "objective rate" is a rate that is not itself a qualified floating rate but which is determined using a single fixed formula and which is based on objective financial or economic information (e.g., one or more qualified floating rates or the yield of actively traded personal property). A rate will not qualify as an objective rate if

it is based on information that is within the control of the Issuer (or a related party) or that is unique to the circumstances of the Issuer (or a related party), such as dividends, profits or the value of the Issuer's stock (although a rate does not fail to be an objective rate merely because it is based on the credit quality of the Issuer).

A qualified inverse floating rate is any objective rate which is equal to a fixed rate minus a qualified floating rate, as long as variations in the rate can reasonably be expected to inversely reflect contemporaneous variations in the qualified floating rate.

A qualified floating rate or objective rate in effect at any time during the term of the instrument must be set at a "current value" of that rate – the value of the rate on any day that is no earlier than 3 months prior to the first day on which that value is in effect and no later than 1 year following that first day.

A Variable Interest Rate Security that provides for stated interest at either a single qualified floating rate or a single objective rate throughout the term thereof and that qualifies as a "variable rate debt instrument" will generally not be treated as having been issued with OID unless the Variable Interest Rate Security is issued at a "true discount" (i.e., at a price below the Security's stated principal amount) in excess of a specified *de minimis* amount. OID on a Variable Interest Rate Security arising from true discount is allocated to an accrual period using the constant yield method described above.

In general, any other Variable Interest Rate Security that qualifies as a "variable rate debt instrument" will be converted into an equivalent fixed rate debt instrument for purposes of determining the amount and accrual of OID and qualified stated interest on the Variable Interest Rate Security. Such a Variable Interest Rate Security must be converted into an equivalent fixed rate debt instrument by substituting any qualified floating rate or qualified inverse floating rate provided for under the terms of the Variable Interest Rate Security with a fixed rate equal to the value of the qualified floating rate or qualified inverse floating rate, as the case may be, as of the Variable Interest Rate Security's issue date. Any objective rate (other than a qualified inverse floating rate) provided for under the terms of the Variable Interest Rate Security is converted into a fixed rate that reflects the yield that is reasonably expected for the Variable Interest Rate Security. In the case of a Variable Interest Rate Security that qualifies as a "variable rate debt instrument" and provides for stated interest at a fixed rate in addition to either one or more qualified floating rates or a qualified inverse floating rate, the fixed rate is initially converted into a qualified floating rate (or a qualified inverse floating rate, if the Variable Interest Rate Security provides for a qualified inverse floating rate). Under these circumstances, the qualified floating rate or qualified inverse floating rate that replaces the fixed rate must be such that the fair market value of the Variable Interest Rate Security as of the Variable Interest Rate Security's issue date is approximately the same as the fair market value of an otherwise identical debt instrument that provides for either the qualified floating rate or qualified inverse floating rate rather than the fixed rate. Subsequent to converting the fixed rate into either a qualified floating rate or a qualified inverse floating rate, the Variable Interest Rate Security is converted into an equivalent fixed rate debt instrument in the manner described above.

Once the Variable Interest Rate Security is converted into an equivalent fixed rate debt instrument pursuant to the foregoing rules, the amount of OID and qualified stated interest, if any, are determined for the equivalent fixed rate debt instrument by applying the general OID rules to the equivalent fixed rate debt instrument and a U.S. holder of the Variable Interest Rate Security will account for the OID and qualified stated interest as if the U.S. holder held the equivalent fixed rate debt instrument. In each accrual period, appropriate adjustments will be made to the amount of qualified stated interest or OID assumed to have been accrued or paid with respect to the equivalent fixed rate debt instrument in the event that these amounts differ from the actual amount of interest accrued or paid on the Variable Interest Rate Security during the accrual period.

If a Variable Interest Rate Security, such as a Security the payments on which are determined by reference to an index, does not qualify as a "variable rate debt instrument", then the Variable Interest Rate Security will be treated as a contingent payment debt instrument. Prospective purchasers should consult with their own tax advisers concerning the proper U.S. federal income tax treatment of Variable Interest Rate Securities that are treated as contingent payment debt.

### *Short-Term Securities*

In general, an individual or other cash basis U.S. holder of a Security with a term of one year or less is not required to accrue OID (calculated as set forth below for the purposes of this paragraph) for U.S. federal income tax purposes unless it elects to do so (but may be required to include any stated interest in income as the interest is received). Accrual basis U.S. holders and certain other U.S. holders are required to accrue OID on Securities with a term of one year or less on a straight-line basis or, if the U.S. holder so elects, under the constant-yield method (based on daily compounding). In the case of a U.S. holder not required and not electing to include OID in income currently, any gain realised on the sale or retirement of the Security with a term of one year or less will be ordinary income to the extent of the OID accrued on a straight-line basis (unless an election is made to accrue the OID under the constant-yield method) through the date of sale or retirement. U.S. holders who are not required and do not elect to accrue OID on Securities with a term of one year or less will be required to defer deductions for interest on borrowings allocable to Securities with a term of one year or less in an amount not exceeding the deferred income until the deferred income is realised.

For purposes of determining the amount of OID subject to these rules, all interest payments on a Security with a term of one year or less are included in such Security's stated redemption price at maturity. A U.S. holder may elect to determine OID on a Security with a term of one year or less as if such Security had been originally issued to the U.S. holder as the U.S. holder's purchase price for the Security. This election shall apply to all obligations with a maturity of one year or less acquired by the U.S. holder on or after the first day of the first taxable year to which the election applies, and may not be revoked without the consent of the IRS.

### *Securities Purchased at a Premium*

A U.S. holder that purchases a Security for an amount in excess of its principal amount, or for a Discount Security, its stated redemption price at maturity, may elect to treat the excess as "amortisable bond premium", in which case the amount required to be included in the U.S. holder's income each year with respect to interest on the Security will be reduced by the amount of amortisable bond premium allocable (based on the Security's yield to maturity) to that year. Any election to amortise bond premium shall apply to all bonds (other than bonds the interest on which is excludable from gross income for U.S. federal income tax purposes) held by the U.S. holder at the beginning of the first taxable year to which the election applies or thereafter acquired by the U.S. holder, and is irrevocable without the consent of the IRS. A U.S. holder that does not elect to take bond premium (other than acquisition premium as described above under "Acquisition Premium") into account currently will recognise a capital loss when the Security matures.

### *Purchase, Sale and Retirement of Securities*

A U.S. holder's tax basis in a Security will generally be its cost, increased by the amount of any OID and market discount included in the U.S. holder's income with respect to the Security and the amount, if any, of income attributable to *de minimis* OID and *de minimis* market discount included in the U.S. holder's income with respect to the Security, and reduced by (i) the amount of any payments that are not qualified stated interest payments, and (ii) the amount of any amortisable bond premium applied to reduce interest on the Security.

A U.S. holder will generally recognise gain or loss on the sale or retirement of a Security equal to the difference between the amount realised on the sale or retirement and the U.S. holder's tax basis in the Security. Except to the extent described above under "Original Issue Discount—Market Discount" or "Original Issue Discount—Short Term Securities" or attributable to accrued but unpaid interest or changes in exchange rates (as discussed below), gain or loss recognised on the sale or retirement of a Security will be capital gain or loss and generally will be treated as from U.S. sources for purposes of the U.S. foreign tax credit limitation and may be taxable at reduced rates in the case of a U.S. holder that is an individual, estate or trust, if the Securities are held for more than one year. The deductibility of capital losses is subject to limitations.

## *Foreign Currency Securities*

### *Interest*

If an interest payment is denominated in, or determined by reference to, a foreign currency, the amount of income recognised by a cash basis U.S. holder will be the U.S. dollar value of the interest payment, based on the exchange rate in effect on the date of receipt, regardless of whether the payment is in fact converted into U.S. dollars.

An accrual basis U.S. holder may determine the amount of income recognised with respect to an interest payment denominated in, or determined by reference to, a foreign currency in accordance with either of two methods. Under the first method, the amount of income accrued will be based on the average exchange rate in effect during the interest accrual period (or, in the case of an accrual period that spans two taxable years of a U.S. holder, the part of the period within the taxable year).

Under the second method, the U.S. holder may elect to determine the amount of income accrued on the basis of the exchange rate in effect on the last day of the accrual period (or, in the case of an accrual period that spans two taxable years, the exchange rate in effect on the last day of the part of the period within the taxable year). Additionally, if a payment of interest is actually received within five business days of the last day of the accrual period, an electing accrual basis U.S. holder may instead translate the accrued interest into U.S. dollars at the exchange rate in effect on the day of actual receipt. Any such election will apply to all debt instruments held by the U.S. holder at the beginning of the first taxable year to which the election applies or thereafter acquired by the U.S. holder, and will be irrevocable without the consent of the IRS.

Upon receipt of an interest payment (including a payment attributable to accrued but unpaid interest upon the sale or retirement of a Security) denominated in, or determined by reference to, a foreign currency, the U.S. holder may recognise U.S. source exchange gain or loss (taxable as ordinary income or loss) equal to the difference between the amount received (translated into U.S. dollars at the spot rate on the date of receipt) and the amount previously accrued, regardless of whether the payment is in fact converted into U.S. dollars.

### *OID*

OID for each accrual period on a Discount Security that is denominated in, or determined by reference to, a foreign currency, will be determined in the foreign currency and then translated into U.S. dollars in the same manner as stated interest accrued by an accrual basis U.S. holder, as described above under "Foreign Currency Securities—Interest". Upon receipt of an amount attributable to OID (whether in connection with a payment on the Security or a sale of the Security), a U.S. holder may recognise U.S. source exchange gain or loss (taxable as ordinary income or loss) equal to the difference between the amount received (translated into U.S. dollars at the spot rate on the date of receipt) and the amount previously accrued, regardless of whether the payment is in fact converted into U.S. dollars.

### *Bond Premium*

Bond premium (including acquisition premium) on a Security that is denominated in, or determined by reference to, a foreign currency, will be computed in units of the foreign currency, and any such bond premium that is taken into account currently will reduce interest income in units of the foreign currency.

On the date bond premium offsets interest income, a U.S. holder may recognise U.S. source exchange gain or loss (taxable as ordinary income or loss) measured by the difference between the spot rate in effect on that date, and on the date the Securities were acquired by the U.S. holder.

### *Purchase, Sale and Retirement of Securities*

As discussed above under "Purchase, Sale and Retirement of Securities", a U.S. holder will generally recognise gain or loss on the sale or retirement of a Security equal to the difference between the amount realised on the sale or retirement and its tax basis in the Security. A U.S. holder's tax basis in a Foreign Currency Security will be determined by reference to the U.S. dollar cost of the Security. The U.S. dollar cost of a Security purchased with foreign currency will generally be the U.S. dollar value of the purchase price on the date of purchase or, in the case of Securities traded on an established securities market, as defined in the applicable Treasury Regulations, that are purchased by a cash basis U.S. holder (or an accrual basis U.S. holder that so elects), on the settlement date for the purchase.

The amount realised on a sale or retirement for an amount in foreign currency will be the U.S. dollar value of this amount on the date of sale or retirement or, in the case of Securities traded on an established securities market, as defined in the applicable Treasury Regulations, sold by a cash basis U.S. holder (or an accrual basis U.S. holder that so elects), on the settlement date for the sale. Such an election by an accrual basis U.S. holder must be applied consistently from year to year and cannot be revoked without the consent of the IRS.

A U.S. holder will recognise U.S. source exchange rate gain or loss (taxable as ordinary income or loss) on the sale or retirement of a Security equal to the difference, if any between the U.S. dollar values of the U.S. holder's purchase price for the Security (or, if less, the principal amount of the Security) (i) on the date of sale or retirement and (ii) the date on which the U.S. holder acquired the Security. Any such exchange rate gain or loss will be realised only to the extent of total gain or loss realised on the sale or retirement.

#### *Disposition of Foreign Currency*

Foreign currency received as interest on a Security or on the sale or retirement of a Security will generally have a tax basis equal to its U.S. dollar value at the time the interest is received or at the time of the sale or retirement. Foreign currency that is purchased will generally have a tax basis equal to the U.S. dollar value of the foreign currency on the date of purchase. Any gain or loss recognised on a sale or other disposition of a foreign currency (including its use to purchase Securities or upon exchange for U.S. dollars) will be U.S. source ordinary income or loss.

#### *Tax Return Disclosure Regulations*

Pursuant to Treasury Regulations (the "**Disclosure Regulations**"), any taxpayer that has participated in a "reportable transaction" and that is required to file a U.S. federal income tax return must generally attach a disclosure statement disclosing such taxpayer's participation in the reportable transaction to the taxpayer's tax return for each taxable year for which the taxpayer participates in the reportable transaction. A penalty in the amount of US\$10,000 in the case of a natural person and US\$50,000 in any other case is imposed on any taxpayer that fails to file a reportable transaction disclosure statement. The Disclosure Regulations provide that, in addition to certain other transactions, a "loss transaction" constitutes a "reportable transaction." A "loss transaction" is any transaction resulting in the taxpayer claiming a loss under Section 165 of the Code in an amount equal to or in excess of certain threshold amounts. The Disclosure Regulations specifically provide that a loss resulting from a "Section 988 transaction" (as defined in Section 988(c)(1) of the Code relating to foreign currency transactions) will constitute a Section 165 loss. In the case of individuals or trusts, whether or not the loss flows through from an S corporation or partnership, if the loss arises with respect to a Section 988 transaction, the applicable threshold amount is US\$50,000 in any single taxable year. Higher threshold amounts apply depending upon the taxpayer's status as a corporation, partnership, or S corporation, as well as certain other factors. It is important to note, however, that the Disclosure Regulations provide that the fact that a transaction is a reportable transaction shall not affect the legal determination of whether the taxpayer's treatment of the transaction is proper. Holders should consult their own tax advisors concerning the potential application of the Disclosure Regulations to the Securities.

#### *Options or Warrants*

The following is a summary of the principal U.S. federal income tax consequences of the ownership of Securities, treated as options or warrants for U.S. federal income tax purposes.

##### *Premium*

Premium paid by a U.S. holder for a Security will generally be treated as a non-deductible capital expenditure. As described in the following two sections, the amount of such premium will be taken into account upon the sale, transfer, cash settlement, or lapse of the Security.

##### *Sale, Transfer, Cash Settlement, or Lapse of Securities*

A U.S. holder who has purchased a Security will generally recognise capital gain or loss upon the sale, transfer, cash settlement or lapse of the Security in an amount equal to the difference between (i) the amount realised by the investor from such sale, transfer, settlement, or lapse and (ii) the amount of the premium that the investor paid for the Security. Such capital gain or loss will be long-term capital gain or loss if the

Security was held for more than one year. Certain exceptions to such treatment are noted below and, if appropriate, may be addressed in the applicable Final Terms.

#### *Mark-to-Market Rules*

Under Section 1256 of the Code, special mark-to-market and character rules apply in the case of certain "nonequity" options and foreign currency contracts. Unless the Securities (other than Securities denominated in a currency other than the U.S. dollar) are listed on a "qualified board or exchange" for purposes of Section 1256 of the Code, however, these mark-to-market rules will not be applicable to U.S. holders of the Securities. Where relevant, the application of the Section 1256 of the Code rules to Securities denominated in a currency other than the U.S. dollar will be discussed in the applicable Final Terms.

#### *Other Treatments*

##### *Tax Treatment of Prepaid Forward Contracts (With or Without a Loan)*

If any Securities are treated as prepaid forward contracts (with or without a loan) for U.S. federal income tax purposes, the following description should apply to such Securities.

##### *Interest Payments*

Payments of interest (if any) will be taxable to a U.S. holder as ordinary interest income at the time such payments are accrued or are received (in accordance with the U.S. holder's regular method of tax accounting).

##### *Cash Settlement, Sale, or Other Disposition of the Securities*

If the Securities are treated in whole or in part as prepaid forward contracts, upon the receipt of cash upon settlement of a Security or upon the sale or other disposition of such Security, a U.S. holder generally will recognise taxable gain or loss equal to the difference between the amount realised (generally, the amount of cash received) and such U.S. holder's tax basis in the Security. In general, a U.S. holder's tax basis in a Security will equal the amount that such U.S. holder paid to acquire the Security. Subject to the discussion below under "Constructive Ownership," any such gain or loss generally will be long-term capital gain or loss if the Security was held for more than one year at the time of settlement or at the time of sale or other disposition.

##### *Constructive Ownership*

Some or all of the net long-term capital gain arising from certain "constructive ownership" transactions may be characterised as ordinary income, in which case an interest charge would be imposed on any such ordinary income. These rules have no immediate application to forward contracts in respect of most property underlying the Securities, because they are only applicable to the extent that the underlying property directly or indirectly includes shares of issuers treated as PFICs or as certain other "pass-through" entities. These rules, however, grant discretionary authority to the U.S. Treasury Department (the "**Treasury**") to expand the scope of "constructive ownership" transactions to include forward contracts in respect of the stock of all corporations, in addition to forward contracts in respect of any debt instrument. The rules also separately direct the Treasury to promulgate regulations excluding a forward contract that does not convey "substantially all" of the economic return on any underlying asset from the scope of "constructive ownership" transactions. It is not possible to predict whether such regulations will be promulgated by the Treasury, or the form or effective date that any regulations that may be promulgated might take.

##### *Interest in the Underlying Property*

Depending on the terms of particular Securities, a U.S. holder could be treated as owning the property underlying those Securities for U.S. federal income tax purposes. In that event, for example, in the case of Index Linked Securities, the U.S. holder would be required to recognise appropriate amounts of capital gain on the disposition of any shares included in the underlying Index each time that the Index is rebalanced. In such a case, such U.S. holder also would be subject to tax on dividends on shares included in the Index in an amount equal to the gross dividends paid by the companies whose shares are included in the Index. In addition, any current expenses (including any withholding taxes) in respect of shares included in the Index



would be treated as if made directly by the U.S. holder, and the deductibility of such expenses (or creditability of such withholding taxes) could be subject to certain limitations.

#### *Contingent Payment Debt Instruments*

If any Securities are treated as contingent payment debt instruments, the tax consequences to a U.S. holder would be determined under U.S. Treasury Regulations governing contingent payment debt instruments (the "Contingent Payment Regulations"). The Contingent Payment Regulations are complex, but very generally apply the OID rules of the Code to a contingent payment debt instrument by requiring that OID be accrued by the U.S. holder every year at a "comparable yield" for the issuer of the instrument, determined at the time of issuance of the obligation. In addition, the Contingent Payment Regulations require that a projected payment schedule, which results in such a "comparable yield" be determined by the issuer. Further, a U.S. holder will be required to make adjustments to income accruals to account for differences between the actual payments received by the U.S. holder and the projected amounts of such payments. To the extent that the actual payments received by a U.S. holder exceed the projected payments on a contingent debt instrument in any taxable year, the owner of that instrument will recognise ordinary interest income for that taxable year equal to the amount of such excess. In addition, any gain realised on the sale, exchange or redemption of a contingent payment debt instrument will be treated as ordinary income. Any loss realised on such sale, exchange or redemption will be treated as an ordinary loss to the extent that the U.S. holder's OID inclusions with respect to the obligation exceed prior reversals of such inclusions required by the adjustment mechanism described above. Any loss realised in excess of such amount generally will be treated as a capital loss.

#### *Loan and One or More Options*

If any Securities are treated as a combination of a loan (or deposit) and one or more options, in general, payments of interest (if any) will be taxable to a U.S. holder as ordinary interest income at the time that such payments are accrued or are received (in accordance with the U.S. holder's regular method of tax accounting), while payments in respect of the options would be taxable in a manner similar to the taxation of corresponding payments under Securities treated as options, as described above under "Options or Warrants."

#### *Possible Alternative Tax Treatment*

If a Security is treated as a unit consisting of a loan and a forward contract, a U.S. holder could be required to accrue a significant amount of OID on a current basis during the period in which it holds the Security. Alternatively, it is possible that the Securities could be characterised for U.S. federal income tax purposes as debt instruments that are subject to the Contingent Payment Regulations (as more fully described above under "Contingent Payment Debt Instruments"), in which case, among other matters, a U.S. holder would be required to accrue income, as OID, at a "comparable yield" for the Issuer, on the purchase price. Furthermore, any gain realised with respect to the Securities would generally be treated as ordinary income.

It is also possible that future regulations or other IRS guidance would require a U.S. holder to accrue income on the Securities on a current basis. The IRS and the Treasury recently issued proposed regulations that require the current accrual of income with respect to contingent non-periodic payments made under certain notional principal contracts. The preamble to the regulations states that the "wait and see" method of tax accounting does not properly reflect the economic accrual of income on such contracts, and requires a current accrual of income with respect to some contracts already in existence at the time the proposed regulations were released. While the proposed regulations do not apply to prepaid forward contracts, the preamble to the proposed regulations expresses the view that similar timing issues exist in the case of prepaid forward contracts. If the IRS published future guidance requiring current accrual of income with respect to contingent payments on prepaid forward contracts, it is possible that a U.S. holder could be required to accrue income over the term of the Securities.

#### *Securities Denominated in a Specified Currency Other Than the U.S. Dollar*

In general, except to the extent that the mark-to-market and character rules under Section 1256 apply (see "Options or Warrants — Mark-to-Market Rules" above), any gain or loss realised in respect of a Warrant or Security denominated in a Specified Currency other than the U.S. dollar will be ordinary income or loss. Any such gain or loss generally must be recognised upon a sale, exchange, termination, rollover, settlement

or exercise of such Warrant or Security, as well as upon an offset of one contract against another in certain circumstances. In general, if a Warrant or Security denominated in a Specified Currency other than the U.S. dollar is subject to Section 1256, a U.S. holder will be required to include mark-to-market gain or loss in respect of such Warrant or Security at the end of each year (or upon transfer, termination, exercise, lapse or other disposition), with 40% of such gain or loss being short-term capital gain or loss and 60% of such gain or loss being long-term capital gain or loss.

If appropriate, additional U.S. federal income tax consequences applicable to Securities denominated in the Specified Currency other than the U.S. dollar will be set forth in the applicable Final Terms.

#### *Foreign Currency Rules*

Payments of premium, exercise price, sale proceeds, and cash settlement amounts in respect of Securities that are denominated in a currency other than the U.S. dollar will be subject to special U.S. tax rules regarding foreign currency transactions. U.S. holders should consult their tax advisors concerning the application of these rules in their particular circumstances.

#### *Recent Developments – Revenue Ruling 2008-2*

On 7th December, 2007, the IRS released a notice that may affect the taxation of holders of the Securities. According to the notice, the IRS and the Treasury are actively considering whether the U.S. holder of an instrument such as the Securities should be required to accrue ordinary income on a current basis, and they are seeking taxpayer comments on the subject. It is not possible to determine what guidance they will ultimately issue, if any. It is possible, however, that under such guidance, U.S. holders of the Securities will ultimately be required to accrue income currently and this could be applied on a retroactive basis. The IRS and the Treasury are also considering other relevant issues, including whether additional gain or loss from such Securities should be treated as ordinary or capital, whether non-U.S. holders of such Securities should be subject to withholding tax on any deemed income accruals, and whether the special "constructive ownership rules" of Section 1260 of the Code might be applied to such Securities. U.S. holders are urged to consult their tax advisors concerning the significance, and the potential impact, of the above considerations. The Issuers intend to continue treating the Securities for U.S. federal income tax purposes in accordance with the treatment described in this Base Prospectus unless and until such time as the Treasury and IRS determine that some alternative treatment is more appropriate.

#### **Non-U.S. Holders**

Except as noted in the applicable Final Terms, the following summary describes the tax consequences to non-U.S. holders of investing in Securities.

A non-U.S. holder will generally not be subject to U.S. federal income tax, including withholding tax, on payments on a Security, or on proceeds from the sale or other disposition of a Security, provided that for purposes of U.S. federal income tax law:

- (i) the payments or proceeds are not effectively connected with the conduct of a trade or business within the United States by the non-U.S. holder;
- (ii) in the case of certain warrants, the non-U.S. holder does not own (directly or by attribution) ten percent or more of the total combined voting power of all classes of stock of ML&Co. or the Issuers entitled to vote;
- (iii) in the case of certain warrants, the non-U.S. holder is not a bank holding the Warrant in the context of an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business;
- (iv) the non-U.S. holder does not have a "tax home" (as defined in Section 911(d)(3) of the Code) or an office or other fixed place of business in the United States; and
- (v) in the case of certain warrants, the beneficial owner of such Warrants provides an IRS Form W-8BEN or otherwise satisfies applicable documentary requirements for establishing that it is a non-U.S. holder, unless such payments or proceeds are effectively connected with the conduct by the non-U.S. holder of a trade or business in the United States.

*Securities Linked to Commodity Prices, Single Securities, Baskets of Securities or Indices and Credit-Linked Notes or Certificates*

The U.S. federal income tax consequences to a non-U.S. Holder of the ownership and disposition of Securities that have principal or interest determined by reference to commodity prices, securities of entities not affiliated with the Issuer, baskets of securities or indices or to the credit of entities not affiliated with the Issuer may vary depending upon the exact terms of the Securities and related factors. Securities containing any of those features may be subject to rules that differ from the general rules discussed above. Non-U.S. Holders intending to purchase such Securities should refer to the discussion relating to taxation in the applicable Final Terms for disclosure concerning the applicability of the rules.

**Information Reporting and Backup Withholding**

The relevant Security Agent will be required to file information returns with the IRS with respect to payments made to certain U.S. holders of Securities. In addition, certain U.S. holders may be subject to backup withholding tax in respect of such payments if they do not provide their taxpayer identification numbers to the relevant Security Agent. In general, U.S. information reporting and backup withholding will not apply to payments on Securities held by a non-U.S. holder and received outside the United States through a non-U.S. bank or other non-U.S. financial institution. Proceeds on sales and payments on Securities received within the United States or through certain U.S.-related financial institutions may be subject to information reporting and backup withholding unless the non-U.S. holder complies with applicable certification procedures to establish that it is not a U.S. person. Persons holding Securities who are not U.S. holders may be required to comply with applicable certification procedures to establish that they are non-U.S. holders in order to avoid the application of such information reporting requirements and backup withholding tax.

Non-U.S. holders should consult their tax advisors regarding the application of information reporting and backup withholding in their particular situations, the availability of an exemption therefrom and the procedure for obtaining the exemption, if available. Backup withholding is not an additional tax. Any amounts withheld from a payment to a holder under the backup withholding rules will be allowed as a credit against the holder's United States federal income tax liability and may entitle the holder to a refund of any excess amounts withheld under the backup withholding rules by timely filing the appropriate claim for refund with the IRS and furnishing all required information.

**LUXEMBOURG TAXATION**

The following summary is of a general nature and is included herein solely for information purposes. It is based on the laws presently in force in Luxembourg, though it is not intended to be, nor should it be construed to be, legal or tax advice. Prospective investors in the Notes, the Warrants and the Certificates (together referred to as the "Securities"), should therefore consult their own professional advisers as to the effects of state, local or foreign laws, including Luxembourg tax law, to which they may be subject.

**Withholding Tax**

**(i) Non-resident holders of the Securities**

Under Luxembourg general tax laws currently in force and subject to the laws of 21st June, 2005 (the "Laws") mentioned below, there is no withholding tax on payments of principal, premium, any additional amounts or interest made to non-resident holders of Securities, nor on accrued but unpaid interest in respect of Securities, nor is any Luxembourg withholding tax payable upon redemption or repurchase of Securities held by non-resident holders of Securities.

Under the Laws implementing the Council Directive 2003/48/EC of 3rd June, 2003 on taxation of savings income in the form of interest payments and ratifying the treaties entered into by Luxembourg and certain dependent and associated territories of EU Member States (the "Territories"), payments of interest or similar income made or ascribed by a paying agent established in Luxembourg to or for the benefit of an individual beneficial owner or a residual entity, as defined by the Laws, which are resident of, or established in, an EU Member State (other than Luxembourg) or one of the Territories will be subject to a withholding tax unless the relevant recipient has adequately instructed the relevant paying agent to provide details of the relevant payments of interest or similar income to the fiscal authorities of his/her/its country of residence or

establishment, or, in the case of an individual beneficial owner, has provided a tax certificate issued by the fiscal authorities of his/her country of residence in the required format to the relevant paying agent. Where withholding tax is applied, it is currently being levied at a rate of 20 per cent. and will be levied at a rate of 35 per cent. as of 1st July, 2011. Responsibility for the withholding of the tax will be assumed by the Luxembourg paying agent. Payments of interest under the Securities coming within the scope of the Laws would at present be subject to withholding tax of 20 per cent.

**(ii) Resident holders of the Securities**

Under Luxembourg general tax laws currently in force and subject to the law of 23rd December, 2005 as amended by the law of 17th July, 2008 (the "Law") mentioned below, there is no withholding tax on payments of principal, premium, any additional amounts or interest made to Luxembourg resident holders of Securities, nor on accrued but unpaid interest in respect of Securities, nor is any Luxembourg withholding tax payable upon redemption or repurchase of Securities held by Luxembourg resident holders of Securities.

Under the Law payments of interest or similar income made or ascribed by a paying agent established in Luxembourg to or for the benefit of an individual beneficial owner who is resident of Luxembourg or to certain residual entities that secure interest payments on behalf of such individuals (unless such entities have opted either to be treated as UCITS recognised in accordance with the Council Directive 85/611/EC or for the exchange of information regime) will be subject to a withholding tax of 10 per cent. Such withholding tax will be in full discharge of income tax if the beneficial owner is an individual acting in the course of the management of his/her private wealth. Responsibility for the withholding of the tax will be assumed by the Luxembourg paying agent. Payments of interest under the Securities coming within the scope of the Law would be subject to withholding tax of 10 per cent.

**NETHERLANDS ANTILLES TAXATION**

*The following is a general summary and the tax consequences as described here may not apply to a holder of W&C Securities. A holder of W&C Securities should consult his own tax adviser for more information about the tax consequences of acquiring, owning and disposing of W&C Securities in his particular circumstances.*

This taxation summary solely addresses the principal Netherlands Antilles tax consequences of the acquisition, ownership and disposal of W&C Securities. It does not discuss every aspect of taxation that may be relevant to a particular holder of W&C Securities under special circumstances or who is subject to special treatment under applicable law.

This summary is based on the tax laws of the Netherlands Antilles as they are in force and in effect on the date of this Note, Warrant and Certificate Programme. The laws upon which this summary is based are subject to change, possibly with retroactive effect. A change to such laws may invalidate the contents of this summary, which may not be updated to reflect changes in law. This summary assumes that (i) each transaction with respect to W&C Securities is at arm's length, (ii) Merrill Lynch & Co. Inc. as Guarantor is neither resident nor deemed to be resident in the Netherlands Antilles and neither has a permanent establishment nor a permanent representative in the Netherlands Antilles, (iii) no payment under W&C Securities has been or will be secured by a mortgage on any real property, or on any rights on real property, situated within the Netherlands Antilles, (iv) if any payment under W&C Securities qualifies as an interest payment made to or secured to, or for the direct benefit of, an individual who is resident of the part of the Kingdom of the Netherlands situated in Europe or of any other State, with which the Kingdom of the Netherlands has concluded an agreement regarding automatic exchange of information with respect to income in the form of interest payments within the meaning of the Netherlands Antilles Ordinance on the Taxation of Savings Income (*Landsverordening spaarvermogensheffing*), such individual has authorized in writing the submission of information concerning such payments to the competent authorities of his State of residency in accordance with the Netherlands Antilles Ordinance on the Taxation of Savings, and (v) no W&C Securities will be issued that are, in whole or in part, linked to shares of any one or more companies that are resident or deemed to be resident in the Netherlands Antilles for Netherlands Antilles tax purposes.

## **1 Withholding Tax**

All payments under W&C Securities may be made free of withholding or deduction of, for or on account of any taxes of whatever nature imposed, levied, withheld or assessed by the Netherlands Antilles or any political subdivision or taxing authority of or in the Netherlands Antilles.

## **2 Taxes on Income and Capital Gains**

This section "Taxes on Income and Capital Gains" applies to a holder of W&C Securities who is neither resident nor deemed to be resident in the Netherlands Antilles for Netherlands Antilles tax purposes (a "Non-Resident holder of W&C Securities").

A Non-Resident holder of W&C Securities will not be subject to any Netherlands Antilles taxes on income or capital gains in respect of any payment under W&C Securities or in respect of any gain realised on the sale and redemption of W&C Securities, provided that:

- (i) such holder does not have an enterprise or profession or an interest in an enterprise or profession that is, in whole or in part, carried on in the Netherlands Antilles by or for the account of such holder, and to which enterprise or profession or part of an enterprise or profession, as the case may be, his or its W&C Securities are attributable; and
- (ii) if such holder is an individual and if such W&C Securities are not considered securities (*effecten*) for Netherlands Antilles purposes, no payment under the W&C Securities is contingent on the proceeds of any Netherlands Antilles enterprise or profession, nor on the quantities or proceeds of any product mined or processed in the Netherlands Antilles.
- (iii) if such holder is an individual, his W&C Securities do not form part of, and are not deemed to form part of, a substantial interest (*aanmerkelijk belang*) in the Issuer.

An individual's W&C Securities may form part of, or may be deemed to form part of, a substantial interest if he, either alone or together with his spouse and certain of their relatives in blood or by marriage (*bloed- of aanverwanten*) in the direct line, holds, directly or indirectly, (A) at least 5 per cent. of the issued share capital (*geplaatste kapitaal*) of a company, the capital of which is wholly or partly divided into shares, or (B) rights to acquire, directly or indirectly, shares to at least 5 per cent. of the issued share capital of such a company, or (C) profit participating certificates (*winstbewijzen*) that relate to 5 per cent. or more of the annual profit or to 5 per cent. or more of the liquidation proceeds of such a company.

## **3 Gift and Inheritance Taxes**

A person who acquires W&C Securities as a gift, in form or in substance, or who acquires or is deemed to acquire W&C Securities on the death of an individual, will not be subject to Netherlands Antilles gift tax or to Netherlands Antilles inheritance tax, as the case may be, unless the donor is or the deceased was resident or deemed to be resident in the Netherlands Antilles for the purposes of gift tax or inheritance tax; as the case may be.

## **4 Sales Tax**

No sales tax (*omzetbelasting*), turnover tax (*belasting op bedrijfsomzetten*) or similar tax will arise in the Netherlands Antilles on the invoicing or payment of principal and interest on the W&C Securities provided that the W&C Securities will neither be offered or deemed to be offered nor sold or deemed to be sold directly or indirectly to, nor will W&C Securities be acquired or deemed to be acquired or owned or deemed to be owned by:

- (i) an individual who is resident or deemed to be resident in the Netherlands Antilles; or
- (ii) an entity which is resident or deemed to be resident in the Netherlands Antilles if and to the extent such entity qualifies as an entrepreneur (*ondernemer*); or
- (iii) an individual who or an entity which is neither resident nor deemed to be resident in the Netherlands Antilles and who or which is engaged in trade or business in the Netherlands Antilles through a permanent establishment or through a permanent representative;

in each case: for the purposes of the Sales Tax Ordinance (*Landverordening Omzetbelasting 1999*)

## **5 Other Taxes and Duties**

No Netherlands Antilles registration tax, transfer tax, stamp duty or any other similar documentary tax or duty will be payable in the Netherlands Antilles in respect of or in connection with the execution, delivery and/or enforcement by legal proceedings of the documents relating to the issue of W&C Securities or the performance by the Issuer or the Guarantor of its obligations under such documents or under W&C Securities, provided these actions take place outside the Netherlands Antilles. Stamp tax amounting to not more than NAFL 10 (US\$5.60) per page and registration tax of NAFL 5 (US\$2.80) per document are payable in the case of registration in the Netherlands Antilles of documents or if such documents are brought into the courts of the Netherlands Antilles and court fees will be due in the case of litigation in the courts of the Netherlands Antilles.

A holder of W&C Securities will not incur or become liable for any Netherlands Antilles registration tax, transfer tax, stamp duty or any other similar documentary tax or duty by reason only of the acquisition, ownership or disposal of W&C Securities.

## **FRANCE**

**Any discussions of French tax issues set forth in this Base Prospectus is not intended or written to be tax advice to any person. The following discussions of certain French income tax consequences to purchasers of Securities does not purport to discuss all of the tax consequences that may be relevant to a particular purchaser of Securities in light of the purchaser's specific circumstances (such as a purchaser that is a financial institution, dealer, trader, partnership, investment fund or other tax exempt entity). Each person considering an investment in the Securities should seek advice based on its particular circumstances from an independent tax adviser.**

French Income Taxation of an Investor that is a French resident individual ("**French Individual Investor**")

### *Characterisation of the Securities for French tax purposes*

Depending on their characteristics the Securities issued under the Programme may either be classified as warrants (*bons d'option*) ("**French Warrants**") or as notes (*obligations*) ("**French Notes**") for French tax purposes.

The exact characterisation of the Securities will need to be determined on a case by case basis according to their terms. Hence, a French Individual Investor should seek tax advice from an independent tax adviser in order to determine the appropriate characterisation of the Securities.

### *Securities classified as French Warrants for French tax purposes*

A French Individual Investor holding Securities which are classified as French Warrants would be subject to tax on gains or profits arising from a sale or exercise of the Securities. In the absence of listing on a French recognised exchange, any gains realised by a French Individual Investor upon the disposal or exercise of the Securities will be subject to income tax at the progressive rate of up-to 40 per cent. (plus 11 per cent. of social levies). Losses incurred by a French Individual Investor holding Securities in respect of a given tax year may only be offset against gains of a similar nature (gains arising from French Warrants that are not listed in France) realised by such French Individual Investor during the aforesaid tax year or any of the six following tax years.

### *Securities classified as French Notes for French tax purposes*

Any income received by a French Individual Investor holding Securities which are classified as French Notes (including in connection with the redemption of such Securities by the Issuer) is subject to income tax at the progressive rate (up to 40 per cent. plus additional contributions at the rate of 11 per cent.). However a French Individual Investor holding Securities issued by Merrill Lynch S.A. which are classified as French Notes may, subject to completion of certain filing obligations, elect to submit any income received on such Securities to a 29 per cent. levy (18 per cent. plus 11 per cent. of social levies) in lieu of the progressive rate.

Gains realised by a French Individual Investor upon disposal of Securities which are classified as French Notes to a third party are subject to capital gains tax at the rate of 29 per cent. (18 per cent. plus 11 per cent.

of social levies). However, capital gains will only be taxable to the extent that the aggregate amount of disposals of securities realised by the French Individual Investor and his household exceeds €25,000 (in 2008) in a calendar year. Any losses incurred by the French Individual Investor upon disposal of the Securities may be offset against capital gains of a similar nature (i.e. deriving from the disposal of eligible securities as defined under section 150-0 A of the French *Code Général des Impôts*) realised during the same tax year or any of the ten following tax years.

#### **French Corporation Tax of an Investor that is a French Company ("French Corporate Investor")**

Any income or capital gains realised by a French Corporate Investor that is subject to French corporation tax, would be subject to corporation tax at the standard rate of 33.33 per cent. (plus social contributions) regardless of whether the Securities are classified as French Warrants or French Notes. However, the timing of recognition of gains and income in relation to the holding or disposal of the Securities may vary, depending on such Securities characteristics.

#### **French Implementation of the EU Savings Directive**

The Savings Directive (as defined below) has been implemented in French law under article 242 *ter* of the French *Code Général des Impôts*. These provisions impose on paying agents based in France an obligation to report to the French tax authorities, certain information with respect to interest payments made to beneficial owners domiciled in another Member State (or certain territories), including, among other things, the identity and address of the beneficial owner and a detailed list of the different categories of interests (within the meaning of the Savings Directive) paid to that beneficial owner.

#### **SWEDEN**

The following is a summary of certain Swedish tax consequences related to holders of Securities that are residents of Sweden for tax purposes. The summary is based on legislation as of the date of the Base Prospectus and is intended to provide general information only. The summary does not cover tax issues in cases where Securities are held as current assets in business operations or by a partnership. The tax treatment of holders of Securities depends in part on their particular circumstances. Specific tax rules may apply for certain categories of holders of Securities, e.g. investment funds and investment companies. Each holder should consult a tax adviser as to the tax consequences relating to their particular circumstances resulting from the holding of Securities.

##### *Private Individuals*

As regards private individuals interest and capital gains on the Securities are taxed in the capital income category at a rate of 30 per cent. 70 per cent. of a loss is normally deductible in the same income category.

There is currently no Swedish withholding tax (*källskatt*) applicable on payments made by the Issuer in respect of the Securities. Sweden operates a system of preliminary tax (*källskatt*) on interest payments to private individuals and or estates of deceased individuals. The preliminary tax is normally withheld by the Swedish CSD or a participant authorised to act as nominee in the clearing system. Depending on the relevant holder's overall tax liability for the relevant fiscal year, the preliminary tax may contribute towards, equal or exceed the holder's overall tax liability.

Private individuals who are not resident in Sweden for tax purposes may be liable to capital gains taxation in the United Kingdom of Sweden upon disposal or redemption of certain financial instruments that are deemed equity-related, if they have been resident in Sweden or have stayed permanently in Sweden at any time during the calendar year of disposal or redemption or the ten calendar years preceding the year of disposal or redemption.

##### *Limited liability companies*

For limited liability companies (*aktiebolag*), all income is taxed as income from business activities at a rate of 28 per cent. Capital losses on the Securities may, depending on the classification, only be deductible against capital gains on shares and other securities taxes as shares.

#### **EU SAVINGS DIRECTIVE**

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



## OFFERING AND SALE

The Dealers, as applicable, have entered into a Programme Agreement, dated 16th September, 2008 (as the same may be amended or supplemented, from time to time, in accordance with the terms thereof, the "**Programme Agreement**"), with MLSA, MLICo and ML&Co., which sets forth a basis upon which they may from time to time agree to purchase the Securities. In the Programme Agreement, the Issuers has agreed to reimburse the Dealers for certain of their expenses in connection with the issue of Securities under the Programme.

No action has been or will be taken by MLSA, MLICo or ML&Co. that would permit a public offering of any Securities or possession or distribution of any offering material in relation to any Securities in any jurisdiction where action for that purpose is required. No offers, sales, re-sales or deliveries of any Securities, or distribution of any offering material relating to any Securities, may be made in or from any jurisdiction except in circumstances which will result in compliance with any applicable laws and regulations and which will not impose any obligation on MLSA, MLICo or ML&Co.

### UNITED STATES

#### *Notes and Certificates*

None of the Notes or Certificates of any series nor the related guarantee, nor the Entitlements (if any), have been, or will be, registered under the United States Securities Act of 1933, as amended (the "**Securities Act**") or under any state securities laws. The Notes and the Certificates and any Entitlement are only being offered and sold pursuant to the registration exemption contained in Regulation S under the Securities Act. No Notes or Certificates of any series, or interests therein or Entitlement with respect thereto, may at any time be offered, sold, resold, traded, pledged, exercised, redeemed, transferred or delivered, directly or indirectly, in the United States of America (including the states and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction (the "**United States**") or directly or indirectly offered, sold, resold, traded, pledged, exercised, redeemed, transferred or delivered to, or for the account or benefit of, any person who is (i) an individual who is a citizen or resident of the United States; (ii) a corporation, partnership or other entity treated as a corporation or partnership for United States federal income tax purposes, created or organised in or under the laws of the United States, any State thereof or the District of Columbia, or which has its principal place of business in the United States; (iii) any estate which is subject to United States federal income taxation regardless of the source of its income; (iv) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and if one or more United States trustees have the authority to control all substantial decisions of the trust or any trust which elected to be treated as a United States person prior to 20th August, 1996; (v) a pension plan for the employees, officers or principals of a corporation, partnership or other entity described in (ii) above; or (vi) any other "U.S. person" as such term may be defined in Regulation S under the Securities Act ("**U.S. person**"). Consequently, any offer, sale, resale, trade, pledge, exercise, redemption, transfer or delivery of any Notes or Certificates made, directly or indirectly, within the United States or to, or for the account or benefit of, a U.S. person will not be recognised.

Each Dealer has represented and agreed and each further Dealer in respect of an issue of Notes or Certificates will be required to agree that it, its affiliates and any person acting on its or their behalf will not at any time offer, sell, resell, trade, pledge, exercise, redeem, transfer or deliver, directly or indirectly, Notes or Certificates of such series in the United States or to, or for the account or benefit of, any U.S. person or to others for offer, sale, resale, trade, pledge, exercise, redemption, transfer or delivery, directly or indirectly, in the United States or to, or for the account or benefit of, any such U.S. person. Each Dealer has further agreed and each further Dealer in respect of an issue of Notes or Certificates will be required to agree that it, its affiliates, and any person acting on its or their behalf will not offer or sell the Notes or Certificates at any time except in accordance with Rule 903 of Regulation S under the Securities Act, and that neither it, its affiliates, nor any persons acting on its or their behalf will engage in any directed selling efforts with respect to the Notes or Certificates and it and they will comply with the offering restrictions requirements of Regulation S under the Securities Act. The terms used in this paragraph have the meanings given to them by Regulation S under the Securities Act. Any person purchasing Notes or Certificates of any series must agree with the Dealer or the seller of such Notes or Certificates that (i) it is not a U.S. person and it is not located in the United States and was not solicited to purchase the Notes or Certificates, as applicable, while present in

the United States, (ii) it will not at any time offer, sell, resell, trade, pledge, exercise, redeem, transfer or deliver, directly or indirectly, any Notes or Certificates, as applicable, of such series so purchased in the United States or to, or for the account or benefit of, any U.S. person or to others for offer, sale, resale, trade, pledge, exercise, redemption, transfer or delivery, directly or indirectly, in the United States or to, or for the account or benefit of any, U.S. person, (iii) it is not purchasing any Notes or Certificates, as applicable, of such series for the account or benefit of any U.S. person and (iv) it will not make offers, sales, resales, trades, pledges, exercises, redemptions, transfers or deliveries of any Notes or Certificates, as applicable, of such series (otherwise acquired), directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person. Each Dealer has agreed and each further Dealer in respect of an issue of Notes or Certificates will also be required to agree, and any person purchasing Notes or Certificates of any series must agree, to send each person who purchases any Notes or Certificates of such series from it at or prior to confirmation of sale of any Notes or Certificates, a written confirmation (which shall include the definitions of "United States" and "U.S. persons" set forth herein) stating that the Notes or the Certificates, as applicable, and the Guarantee have not been registered under the Securities Act or any state securities laws, and trading in the Notes or the Certificates, as applicable, and the Guarantee has not been approved by the Commodity Futures Trading Commission under the United States Commodity Exchange Act, as amended, and stating that such purchaser agrees that it will not at any time offer, sell, resell, trade, pledge, exercise, redeem, transfer or deliver Notes or Certificates, as applicable, directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person.

Prior to the delivery of the Entitlement in respect of a Physical Delivery Security the holder thereof will be required to represent that, inter alia, he is not a U.S. person, the Note or Certificate, as applicable, was not exercised on behalf of a U.S. person and no cash, and in the case of Physical Delivery Securities, no securities or other property have been or will be delivered within the United States or to, or the account or benefit of, a U.S. person in connection with any exercise thereof. In respect of Notes see "*Annex 10 to the Terms and Conditions – Additional Terms and Conditions for Physical Delivery Notes*" and in respect of Certificates see "*W&C Securities Condition 29*".

The Notes and Certificates in bearer form are also subject to U.S. tax law requirements and may not be offered, sold or delivered within the United States or its possessions or to a United States Person. Terms used in this paragraph have the meanings given to them by the United States Internal Revenue code of 1986, as amended and applicable U.S. Treasury regulations.

Each Dealer has represented and agreed to the following matters with respect to compliance with applicable U.S. tax law and regulations:

- (a) except to the extent permitted under U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D), each Dealer (a) represents that it has not offered or sold, and agrees that during the restricted period it will not offer or sell, Notes or Certificates in bearer form to a person who is within the United States or its possessions or to a U.S. person, and (b) represents that it has not delivered and agrees that it will not deliver within the United States or its possessions Notes or Certificates in bearer form during the restricted period;
- (b) each Dealer represents that it has agreed that throughout the restricted period it will have in effect procedures reasonably designed to ensure that its employees or agent who are directly engaged in selling Notes or Certificates in bearer form are aware that such Notes or Certificates in bearer form may not be offered or sold during the restricted period to a person who is within the United States or its possessions or to a U.S. person, except as permitted by the U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D);
- (c) if it is a U.S. person, each Dealer represents that it is acquiring the Notes or Certificates in bearer form for purposes of resale in connection with their original issuance and if it retains Notes or Certificates in bearer form for its own account it will only do so in accordance with requirements of U.S. Treasury Regulation Section 1.163-5(c)(2)(i)(D)(6);
- (d) with respect to each affiliate that acquires Notes or Certificates in bearer form from a Dealer for the purpose of offering or selling such Notes or Certificates in bearer form during the restricted period, such Dealer either (i) repeats and confirms the representations and agreements contained in sub-

clauses (a), (b) and (c) on such affiliate's behalf or (ii) agrees that it will obtain from such affiliate for the benefit of the Issuer the representations and agreements contained in sub-clauses (a), (b) and (c); and

- (e) each Dealer agrees that it will obtain from any distributor (within the meaning of U.S. Treas. Reg. § 1.163-5(c)(2)(i)(D)(4)(ii)) that purchases any Notes from it pursuant to a written contract with such Dealer (except a distributor that is one of its affiliates or is another Dealer), for the benefit of the Issuer and each other Dealer, the representations contained in, and such distributor's agreement to comply with, the provisions of sub-clauses (a), (b), (c) and (d) insofar as they relate to U.S. Treas. Reg. § 1.163-5(c)(2)(i)(D), as if such distributor were a Dealer hereunder.

### ***Warrants***

Neither the Warrants of any series, the related guarantee of ML&Co., nor any Entitlements have been registered under the Securities Act or any state securities laws. Unless a series of Warrants is eligible for sale to qualified institutions buyers ("QIBs") as defined in Rule 144A under the Securities Act ("**Rule 144A**") who are also qualified purchasers ("QPs") within the meaning of Section 3(c)(7) and as defined in Section 2(a)(51) of the United States Investment Company Act of 1940 and the rules thereunder, as amended, in the United States or to, or for the account or benefit of, U.S. persons who satisfy such criteria pursuant to an exemption from the registration requirements of the Securities Act (as indicated in the applicable Final Terms), no Warrants of any series, or interests therein, may at any time be offered, sold, resold or delivered, directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person or to others for offer, sale, resale or delivery, directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person.

In the event that a series of Warrants is so eligible for sale (a) in the United States to QIBs who are also QPs or (b) to, or for the account or benefit of U.S. persons who are QIBs and also QPs pursuant to an exemption from the registration requirements of the Securities Act, any sale or transfer restrictions or certification requirements applicable to such Warrants in addition to those set out in the Terms and Conditions of the Warrants will be set out in the applicable Final Terms. Offers, sales, resales or deliveries of Warrants of any series, or interests therein, directly or indirectly, in the United States or to, or for the account or benefit of, U.S. persons would constitute a violation of United States securities laws unless made in compliance with the registration requirements of the Securities Act or pursuant to an exemption therefrom. As used herein, "**United States**" means the United States of America (including the States and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction; and "**U.S. person**" means (i) an individual who is a citizen or resident of the United States; (ii) a corporation, partnership or other entity treated as a corporation or partnership for United States federal income tax purposes, created or organised in or under the laws of the United States, any State thereof or the District of Columbia, or which has its principal place of business in the United States; (iii) any estate or trust which is subject to United States federal income taxation regardless of the source of its income; (iv) any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and if one or more United States trustees have the authority to control all substantial decisions of the trust or any trust which elected to be treated as a United States person prior to 20th August, 1996; (v) a pension plan for the employees, officers or principals of a corporation, partnership or other entity described in (ii) above; or (vi) any other "U.S. person" as such term may be defined in Regulation S under the Securities Act. Notwithstanding the preceding sentence, to the extent provided in Treasury regulations, certain trusts in existence on 20th August, 1996 and treated as U.S. persons before such date that elect to be so treated shall also be considered U.S. persons.

Each Dealer has represented and agreed and each further Dealer in respect of an issue of Warrants will be required to agree that without the prior written agreement of the Issuer and ML&Co. it will not at any time offer, sell, resell or deliver, directly or indirectly, Warrants of such series in the United States or to, or for the account or benefit of, any U.S. person or to others for offer, sale, resale or delivery, directly or indirectly, in the United States or to, or for the account or benefit of, any such U.S. person. The Issuer and ML&Co. have agreed to sales by MLI to Merrill Lynch, Pierce, Fenner & Smith Incorporated for re-sale (a) to persons in the United States and (b) to, or for the account or benefit of, U.S. persons, in either case, who are QIBs and also QPs.

Any person purchasing Warrants of any series (other than a series of Warrants eligible for sale (a) in the United States to QIBs who are also QPs or (b) to, or for the account or benefit of, any U.S. person who is a QIB and also a QP) must agree with the relevant Issuer or the seller of such Warrants that, (i) it will not at any time offer, sell, resell or deliver, directly or indirectly, any Warrants of such series so purchased in the United States or to, or for the account or benefit of, any U.S. person or to others for offer, sale, resale or delivery, directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person, (ii) it is not purchasing any Warrants of such series for the account or benefit of any U.S. person and (iii) it will not make offers, sales, re-sales or deliveries of any Warrants of such series (otherwise acquired), directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person.

Any person purchasing Warrants of a series eligible for sale (a) in the United States to a QIB that is also a QP or (b) to, or for the account or benefit of, any U.S. person who is a QIB and also a QP must agree with the relevant Issuer that any resales of such Warrants to, or for the account or benefit of, a U.S. person may be effected only to or through such Issuer to a QIB that is also a QP that has executed an Investor Representation Letter. Each Dealer has agreed and each further Dealer in respect of an issue of Warrants will also be required to agree, and any person purchasing Warrants of such series must agree, to send each person who purchases any Warrants of such series from it a written confirmation (which shall include the definitions of "United States" and "U.S. persons" set forth herein) stating that the Warrants, the related guarantee and the Entitlements have not been registered under the Securities Act and stating that such purchaser agrees that it will not at any time offer, sell, resell or deliver Warrants, directly or indirectly, in the United States or to, or for the account or benefit of, any U.S. person. Unless a Warrant is eligible for sale exclusively (a) in the United States to QIBs who are also QPs or (b) to, or for the account or benefit of, any U.S. person who is a QIB and also a QP, any person exercising a Warrant will be required to represent that it is not a U.S. person. If a Warrant eligible for sale in the United States or to, or for the account or benefit of, U.S. persons is concurrently eligible for sale to non-U.S. persons, any person exercising such Warrants will be required to represent either that it is a QIB who is also a QP or that it is not a U.S. person. See *"Annex 11 to the Terms and Conditions – Additional Terms and Conditions for Rule 144A Warrants"*.

Each QIB/QP purchasing Warrants in the United States will be required to sign and deliver an Investor Representation Letter pursuant to which it will agree, among other things, that any resales of such Warrants may be effected only to or through the Issuer to another QIB/QP or in accordance with Regulation S and, if it intends to hold its interests in the Warrants through a Rule 144A Global Warrant in DTC, will be required to obtain from the DTC direct participant through which it intends to hold its interest in the Warrants a Custodian Letter in the form of schedule 19 to the Agency Agreement unless such DTC direct participant is already an Authorised Custodian. Prior to the delivery of the Entitlement in respect of a Physical Delivery Warrant the holder thereof will be required to represent that, inter alia, he is not a U.S. person, the Warrant was not exercised on behalf of a U.S. person and no cash, and in the case of Physical Delivery Warrants, no securities or other property have been or will be delivered within the United States or its possessions or to, or for the account or benefit of, a U.S. person in connection with any exercise thereof. See *"Notice to Purchasers and Holders of Securities and Transfer Restrictions"*.

## **PUBLIC OFFER SELLING RESTRICTION UNDER THE PROSPECTUS DIRECTIVE**

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

- (a) if the final terms in relation to the Securities specify that an offer of those Securities may be made other than pursuant to Article 3(2) of the Prospectus Directive in that Relevant Member State (a **"Non-exempt Offer"**), following the date of publication of a prospectus in relation to such Securities which has been approved by the competent authority in that Relevant Member State or, where appropriate, approved in another Relevant Member State and notified to the competent authority in

that Relevant Member State, provided that any such prospectus has subsequently been completed by the final terms contemplating such Non-exempt Offer, in accordance with the Prospectus Directive, in the period beginning and ending on the dates specified in such prospectus or final terms, as applicable;

- (b) at any time to legal entities which are authorised or regulated to operate in the financial markets or, if not so authorised or regulated, whose corporate purpose is solely to invest in securities;
- (c) at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last (or in the case of Sweden, last two) financial year(s); (2) a total balance sheet of more than €43,000,000; and (3) an annual net turnover of more than €50,000,000, as shown in its last (or in the case of Sweden, last two) annual or consolidated accounts;
- (d) at any time to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of the relevant Dealer or Dealers nominated by the Issuer for any such offer; or
- (e) at any time in any other circumstances falling within Article 3(2) of the Prospectus Directive,

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

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

## **UNITED KINGDOM**

Each Dealer has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree, that:

- (a) in relation to any Securities which have a maturity of less than one year and where the issue of the Securities would otherwise constitute a contravention of Section 19 of the Financial Services and Markets Act 2000 (the "FSMA") by the relevant Issuer (i) it is a person whose ordinary activities involve it in acquiring, holding, managing or disposing of investments (as principal or agent) for the purposes of its business and (ii) it has not offered or sold and will not offer or sell any Securities other than to persons whose ordinary activities involve them in acquiring, holding, managing or disposing of investments (as principal or as agent) for the purposes of their businesses or who it is reasonable to expect will acquire, hold, manage or dispose of investments (as principal or agent) for the purposes of their businesses;
- (b) it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the FSMA) received by it in connection with the issue or sale of any Securities in circumstances in which Section 21(1) of the FSMA does not apply to the relevant Issuer or ML&Co.; and
- (c) it has complied and will comply with all applicable provisions of the FSMA with respect to anything done by it in relation to any Securities in, from or otherwise involving the United Kingdom.

## **NETHERLANDS ANTILLES**

The sale of Securities to an Unauthorised Netherlands Antilles Person is prohibited under Netherlands Antilles Law. An "**Unauthorised Netherlands Antilles Person**" for the purposes of this Base Prospectus means any citizen or inhabitant of the Netherlands Antilles (including personal holding companies, corporations, partnerships or other legal entities created or organised under the laws of the Netherlands

Antilles), who is treated as a "resident" as defined in Article 1 of the Foreign Exchange Act of the Netherlands Antilles and who has not obtained a licence and exemption from the Bank of the Netherlands Antilles to participate in the relevant issue of the Securities as described in this Base Prospectus.

## THE GRAND DUCHY OF LUXEMBOURG

Each Dealer has represented, warranted and agreed, and each further Dealer appointed under the Programme will be required to represent, warrant and agree that in addition to the circumstances described above in "Offering and Sale – Public Offer Selling Restriction under the Prospective Directive", Dealers may also offer the Securities for sale in The Grand Duchy of Luxembourg:

- (a) at any time, to national and regional governments, central banks, international and supranational institutions (such as the International Monetary Fund, the European Central Bank, the European Investment Bank) and other similar international organisations;
- (b) at any time, to legal entities which are authorised or regulated to operate in the financial markets (including, credit institutions, investment firms, other authorised or regulated financial institutions, insurance companies, undertakings for collective investment and their management companies, pension and investment funds and their management companies, commodity dealers) as well as entities not so authorised or regulated whose corporate purpose is solely to invest in securities; and
- (c) at any time, to certain natural persons or small and medium-sized enterprises (as defined in the Luxembourg law dated 10th July, 2005 on prospectuses for securities implementing the Prospectus Directive into Luxembourg law) recorded in the register of natural persons or small and medium-sized enterprises considered as qualified investors as held by the Commission de Surveillance du Secteur Financier as competent authority in Luxembourg in accordance with the Prospectus Directive.

## REPUBLIC OF ITALY

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

- (a) to qualified investors (*investitori qualificati*) as defined in Article 100 of Legislative Decree No. 58 of 24th February, 1998, as amended (the "**Financial Services Act**") and the relevant implementing CONSOB regulations, as amended from time to time, and in Article 2 of Directive No. 2003/71/EC of 4th November, 2003; or
- (b) in circumstances which are exempted from the rules on solicitation of investments pursuant to Article 100 of the Financial Services Act and Article 33, first paragraph, of CONSOB Regulation No. 11971 of 14th May, 1999, as amended ("**CONSOB Regulation No. 11971**").

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

- (i) made by an investment firm, bank or financial intermediary permitted to conduct such activities in the Republic of Italy in accordance with the Italian Financial Services Act, CONSOB Regulation No. 16190 of 29th October, 2007 (as amended from time to time) and Legislative Decree No. 385 of 1st September, 1993, as amended (the "**Italian Banking Act**"); and
- (ii) in compliance with Article 129 of the Italian Banking Act, as amended, and the implementing guidelines of the Bank of Italy, as amended from time to time, pursuant to which the Bank of Italy may request information on the issue or the offer of securities in the Republic of Italy; and
- (iii) in compliance with any other applicable laws and regulations or requirement imposed by CONSOB or other Italian authority.

*Please note that in accordance with Article 100-bis of the Italian Financial Services Act, where no exemption from the rules on solicitation of investments applies under (a) and (b) above, the subsequent distribution of the Securities on the secondary market in Italy must be made in compliance with the public offer and the*

*prospectus requirement rules provided under the Italian Financial Services Act and CONSOB Regulation No. 11971. Failure to comply with such rules may result in the sale of such Securities being declared null and void and in the liability of the intermediary transferring the financial instruments for any damages suffered by the investors.*

## FRANCE

Each of the Dealers, each Issuer and ML&Co. has represented and agreed, and each further Dealer appointed under the Programme will be required to represent and agree that:

- (a) *Offer to the public in France:* it has only made and will only make an offer of Securities to the public (*appel public à l'épargne*) in France in the period beginning (i) when a prospectus in relation to those Securities has been approved by the *Autorité des marchés financiers* ("AMF"), on the date of such publication or, (ii) when a prospectus has been approved by the competent authority of another Member State of the European Economic Area which has implemented the EU Prospectus Directive 2003/71/EC, on the date of notification of such approval to the AMF and, in either case, when the formalities required by French laws and regulations have been carried out, and ending at the latest on the date which is 12 months after the date of the approval of the Base Prospectus, all in accordance with articles L.412-1 and L.621-8 of the French *Code monétaire et financier* and the *Règlement général* of the AMF; or
- (b) *Private placement in France:* it has not offered or sold and will not offer or sell, directly or indirectly, to the public in France, and, and it has not distributed and will not distribute or cause to be distributed the Base Prospectus, the relevant Final Terms or any other offering material relating to the Securities to the public in France, and such offers, sales and distributions may be made in France only to (i) providers of investment services relating to portfolio management for the account of third parties, and/or (ii) qualified investors to portfolio management for the account of third parties, and/or (iii) qualified investors (*investisseurs qualifiés*) other than individuals all as defined in, and in accordance with articles L.411-1, L.411-2 and D.411-1 to D.411-3 of the French *Code monétaire et financier*.

## JAPAN

The Securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the "**Financial Instruments and Exchange Law**"). Each Dealer has represented and agreed and each further Dealer appointed under the Programme will be required to represent and agree that it has not offered or sold and will not offer or sell any Securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organised under the laws of Japan) or to others for re-offering or resale, directly or indirectly, in Japan or to, or for the benefit of, a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

## SINGAPORE

This Base Prospectus has not been registered as a prospectus with the Monetary Authority of Singapore (the "**MAS**") under the Securities and Futures Act, Chapter 289 of Singapore (the "**SFA**").

Accordingly, where the Securities are cash settled or where there is physical delivery of Reference Item Linked Securities which are shares or debentures, each Dealer has represented, warranted and agreed, and each further Dealer appointed under the Programme will be required to represent, warrant and agree, that it has not offered or sold any Securities or caused the Securities to be made the subject of an invitation for subscription or purchase nor will it offer or sell the Securities or cause the Securities to be made the subject of an invitation for subscription or purchase, nor has it circulated or distributed nor will it circulate or distribute this Base Prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the Securities, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the SFA, (ii) to a relevant person pursuant to Section 275(1), or any person pursuant to Section 275(1A), and in accordance with the



conditions specified in Section 275, of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the Securities are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

- (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or
- (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust shall not be transferred within six months after that corporation or that trust has acquired the Securities under Section 275 of the SFA except:

- (1) to an institutional investor under Section 274 of the SFA or to a relevant person defined in Section 275(2) of the SFA, or to any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA;
- (2) where no consideration is or will be given for the transfer; or
- (3) where the transfer is by operation of law.

Where there is physical delivery of Reference Item Linked Securities which are units in an open ended fund which is a "collective investment scheme" (as defined under the SFA), each Dealer has represented, warranted and agreed, and each further Dealer appointed under the Programme will be required to represent, warrant and agree that this Base Prospectus or any other document or material in connection with the offer or sale or invitation for subscription or purchase of the Securities may not be circulated or distributed nor may the Securities be offered or sold or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to any person in Singapore other than (i) to an institutional investor under Section 304 of the SFA, or (ii) pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.<sup>1</sup>

Where there is physical delivery of other Reference Item Linked Securities other than those specifically referred to above, each Dealer has represented, warranted and agreed, and each further Dealer appointed under the Programme will be required to represent, warrant and agree that this Base Prospectus or any other document or material in connection with the offer or sale or invitation for subscription or purchase of the Securities may not be circulated or distributed nor may the Securities be offered or sold or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to any person in Singapore other than pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

## **GENERAL**

Each Dealer has agreed and each further Dealer appointed under the Programme will be required to agree that it will (to the best of its knowledge and belief) comply with all applicable securities laws and regulations in force in any jurisdiction in which it purchases, offers, sells or delivers Securities or possesses or distributes this Base Prospectus or any other offering material and will obtain any consent, approval or permission required by it for the purchase, offer, sale or delivery by it of Securities under the laws and regulations in force in any jurisdiction to which it is subject or in which it makes such purchases, offers, sales or delivery and neither the Issuers, ML&Co. nor any of the other Dealers shall have no responsibility therefor.

None of the Issuers, ML&Co. and the Dealers represents that Securities may at any time lawfully be sold in compliance with any applicable registration or other requirements in any jurisdiction, or pursuant to any exemption available thereunder, or assumes any responsibility for facilitating such sale.

<sup>1</sup> Please note that while there are exemptions from prospectus requirements of open ended funds available for sale or offer of the Securities to accredited investors and certain other persons pursuant to Section 305 of the SFA, this would involve additional requirements including an application to be made to the MAS for any such fund to be recognized as a restricted scheme under the SFA.



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

## **GENERAL INFORMATION**

### **(1) Authorisation**

The establishment and operation of the Programme was duly authorised by resolutions of the Directors of MLSA on 20th March, 2008 and was duly authorised by the Partners of MLICo. on 2nd April, 1996 and 22nd August, 2000. The Guarantee will be issued pursuant to authority granted by the Board of Directors of the Guarantor on 24th February, 1986, 5th June, 2000, 23rd January, 2006 and 24th April, 2008 and a Consent of the Board of Directors of the Guarantor in Lieu of Meeting dated 13th March, 2003 as supplemented by the Approval of New Procedures on the Issuance and Sale of Indebtedness of the Guarantor dated 19th October, 2004 and the Certificate of Delegation dated 12th September, 2003, the Omnibus Certificate of Designation of the Guarantor relating to the Issuance and Sale of Debt Securities, Warrants and Guarantees of the Guarantor dated 18th July, 2008, and pursuant to authority granted by the Finance Committee of the Board of Directors of the Guarantor on 26th April, 2007, and the Executive Committee of the Board of Directors of the Guarantor on 28th September, 1995 as each such authority may be supplemented from time to time.

### **(2) Approval, Listing and Admission to Trading**

Application has been made to the CSSF to approve this document as a base prospectus. Application has also been made to the Luxembourg Stock Exchange for Securities to be admitted to trading on the regulated market of the Luxembourg Stock Exchange and to be listed on the Official List of the Luxembourg Stock Exchange. Application has also been made to the Luxembourg Stock Exchange for Securities issued under the Programme during the 12 months from the date of this Base Prospectus to be admitted to trading on the Luxembourg Stock Exchange's alternative market – Euro MTF – and to be admitted to the Official List of the Luxembourg Stock Exchange.

The Luxembourg Stock Exchange's regulated market is a regulated market for the purposes of the Markets in Financial Instruments Directive (Directive 2004/39/EC).

### **(3) Documents Available**

For the period of 12 months following the date of this Base Prospectus, copies of the following documents will, when published, be available from the specified office of each Agent:

- (i) the constitutional documents of each of MLSA, MLICo. and ML&Co.;
- (ii) the MLSA EMTN Previous Conditions, the MLICo. Previous Conditions and the MLSA Certificate Previous Conditions;
- (iii) the 2006 Annual Report, the 2006 Auditors' Report, the Proxy Statement, the 2007 Annual Report and the 2007 Auditors' Report;
- (iv) the February 2008 Current Report, the April 2008 Current Report, the May 2008 Current Report, the 17th July 2008 Current Report, the 29th July 2008 Current Report, the August 2008 Current Report, the 4th September 2008 Current Report and 15th September 2008 Current Report;
- (v) the May 2008 Quarterly Report and August 2008 Quarterly Report;
- (vi) the MLSA 2006 Accounts and MLSA 2007 Accounts;
- (vii) the MLICo. 2006 Accounts and the MLICo. 2007 Accounts;
- (viii) the Guarantee;
- (ix) the Agency Agreement;
- (x) the Programme Agreement;
- (xi) a copy of this Base Prospectus;
- (xii) any future prospectuses, offering circulars, information memoranda and supplements to this Base Prospectus, any Final Terms or Securities Note and Summary (if any) (save that a Final Terms relating to a Security which is neither admitted to trading on a regulated market in the

European Economic Area nor offered in the European Economic Area in circumstances where a prospectus is required to be published under the Prospectus Directive will only be available for inspection by a holder of such Security and such holder must produce evidence satisfactory to the relevant Issuer and the relevant Security Agent as to its holding of Securities and identity) and any other documents incorporated herein or therein by reference; and

- (xiii) in the case of a syndicated issue of Securities admitted to trading on the Luxembourg Stock Exchange's regulated market, the syndication agreement (or equivalent document).

In addition, a copy of this Base Prospectus, each Final Terms relating to the Securities which are admitted to trading on the Luxembourg Stock Exchange's regulated market and the documents incorporated by reference herein will be published on the website of the Luxembourg Stock Exchange ([www.bourse.lu](http://www.bourse.lu)).

Reports and other information filed by ML&Co. with the U.S. Securities and Exchange Commission may be inspected and copied at the public reference facilities maintained by the Commission in the Public Reference Room, 100 F Street, N.E., Washington, D.C. 20549. Information on the operation of the Public Reference Room may be obtained by calling the Commission at 1-800-SEC-0330. The Commission maintains a website that contains reports, proxy and information statements and other materials that are filed through the Commission's Electronic Data Gathering Analysis and Retrieval System. The Website can be accessed at <http://www.sec.gov>. In addition, similar information concerning ML&Co. can be inspected at the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005.

#### **(4) Clearing Systems**

Information relating to the form of the Securities and the relevant Clearing Systems is set out in "Form of the Securities" on pages 55 - 59 of this Base Prospectus.

The address of Euroclear is 1 Boulevard du Roi Albert II B-1210 Brussels.

The address of Clearstream Luxembourg is 42 avenue JF Kennedy, L-1855 Luxembourg.

The address of Euroclear France is 115 rue Réaumur, F-75081 Paris-CEDEX 02.

The address of Clearstream, Frankfurt is Neue Börsenstrasse 1, 60487 Frankfurt am Main, Germany.

The address of VPC is Box 7822, SE-103 97 Stockholm.

The address of DTC is 55 Water Street, New York, New York 10041.

#### **(5) Auditors and Financial Statements**

The financial statements as of 31st December, 2007 and 31st December, 2006 of ML&Co. for the fiscal years then ended have been audited in accordance with International Standards on Auditing by Deloitte S.A., auditors of ML&Co., without qualification. Deloitte S.A. is a member of I.R.E. "Institut des Réviseurs d'entreprises", a professional body of the audit profession in Luxembourg, a profession which is regulated by the Minister of Justice of Luxembourg. The address of Deloitte S.A. is 560 rue de Neudorf, L-2220 Luxembourg, Grand Duchy of Luxembourg.

The auditor of ML&Co. is Deloitte & Touche LLP Chartered Accountants, currently at Stonecutter Court, 1 Stonecutter Street, London EC4A 4TR, who are members of the Institute of Chartered Accountants. The financial statements of ML&Co. as of and for the two years in the period ended 28th December, 2007 were audited by Deloitte & Touche LLP Chartered Accountants as stated in their reports.

The consolidated balance sheets of ML&Co. and its subsidiaries ("Merrill Lynch") as of 28th December, 2007 and 29th December, 2006, the related consolidated statements of (loss)/earnings, changes in stockholders' equity, comprehensive (loss)/income and cash flows for each of the three years in the period ended 28th December, 2007, the related financial statement schedule and the effectiveness of internal control over financial reporting incorporated herein by reference to ML&Co.'s 2007 Annual Report have been audited by Deloitte & Touche LLP, an

independent registered public accounting firm, whose professional governing body is the Public Company Accounting Oversight Board, currently at Two World Financial Center, 225 Liberty Street, New York, New York 10281-1414, United States of America, as stated in the 2007 Auditors' Report (which report expressed an unqualified opinion on those financial statements, included an explanatory paragraph regarding the changes in accounting methods in 2007 relating to the adoption of Statement of Financial Accounting Standards No. 157, "*Fair Value Measurement*," Statement of Financial Accounting Standards No. 159, "*The Fair Value Option for Financial Assets and Financial Liabilities-Including an amendment of FASB Statement No. 115*," and FASB Interpretation No. 48, "*Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109*," and in 2006 for share-based payments to conform to Statement of Financial Accounting Standards No. 123 (revised 2004), "*Share-Based Payment*," and included an explanatory paragraph relating to the restatement of Merrill Lynch's consolidated statements of cash flows for the fiscal years ended 29th December, 2006 and 30th December, 2005 (the "**Cash Flow Restatements**") discussed in Note 20 to Merrill Lynch's consolidated financial statements included in the 2007 Annual Report).

The consolidated balance sheets of Merrill Lynch as of 29th December, 2006 and 30th December, 2005, the related consolidated statements of earnings, changes in stockholders' equity, comprehensive income and cash flows for each of the three years in the period ended 29th December, 2006, the related financial statement schedule and management's report on the effectiveness of internal control over financial reporting incorporated herein by reference to ML&Co.'s 2006 Annual Report have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in the 2006 Auditors' Report (which report expressed an unqualified opinion on those financial statements and included an explanatory paragraph regarding the changes in accounting methods in 2006 for share-based payments to conform to Statement of Financial Accounting Standards No. 123 (revised 2004), "*Share-Based Payment*" and must be read together, and construed, with the February 2008 Current Report related to the Cash Flow Restatements). Refer to the explanatory paragraph within the 2007 Auditors' Report relating to the Cash Flow Restatements discussed in Note 20 to Merrill Lynch's consolidated financial statements included in the 2007 Annual Report.

With respect to the unaudited interim condensed consolidated financial information of Merrill Lynch for the three-month periods ended 28th March, 2008 and 30th March, 2007 and the three-month periods ended 27th June, 2008 and 29th June, 2007, which is incorporated herein by reference, Deloitte & Touche LLP, an independent registered public accounting firm, have applied limited procedures in accordance with the standards of the Public Company Accounting Oversight Board (United States) for a review of such information. However, as stated in their reports included in the ML&Co.'s Quarterly Report on Form 10-Q for the quarterly period ended 28th March, 2008 and 27th June, 2008 and incorporated by reference herein, they did not audit and they do not express an opinion on that interim financial information. Accordingly, the degree of reliance on their report on such information should be restricted in light of the limited nature of the review procedures applied.

**(6) Interim and Consolidated Statements**

As at the date hereof, neither MLSA nor MLICo. publishes interim or consolidated financial statements.

**(7) Significant or Material Change**

- (i) Save as disclosed in paragraph (ii) below, and in the paragraphs entitled "*Recent Developments*" in the section entitled "*Merrill Lynch & Co., Inc.*" on page 324, there has been no significant change in the financial or trading position of MLSA or its subsidiary on a consolidated basis, MLICo. or, except as disclosed herein, ML&Co. or its subsidiaries on a consolidated basis since (i) in the case of MLSA, 31st December, 2007, (ii) in the case of MLICo., 28th December, 2007 and (iii) in the case of ML&Co., 27th June, 2008 and there has been no material adverse change in the prospects of MLSA or its subsidiary on a consolidated basis, MLICo. or, except as disclosed herein, ML&Co. and its subsidiaries on a consolidated basis since (i) in the case of MLSA, 31st December, 2007, (ii) in the case of MLICo., 28th December, 2007 and (iii) in the case of ML&Co., 28th December, 2007.

- (ii) In the case of MLCo., since 28th December, 2007 the value of trading liabilities in issuance has fallen by 24 per cent. as a consequence of redemptions exceeding issuances. MLCo. is profitable as at 28th August, 2008.

## **(8) Litigation**

ML&Co., certain of its subsidiaries and other persons have been named as parties in various legal actions and arbitration proceedings arising in connection with the operation of ML&Co.'s businesses. In most cases, plaintiffs seek unspecified damages and other relief. These actions include the following:

### *Initial Public Offering ("IPO") Underwriting Fee Litigation*

*In re Public Offering Fee Antitrust Litigation and in re Issuer Plaintiff Initial Public Offering Fee Antitrust Litigation:* Merrill Lynch<sup>3</sup> is named as one of approximately two dozen defendants that have been named in purported class actions filed in the United States District Court for the Southern District of New York alleging that underwriters conspired to fix the "fee" paid to purchase certain IPO securities at 7 per cent. in violation of antitrust laws. These complaints have been filed by both investors and issuers in IPOs. On 24th February, 2004, the court held that the purchaser plaintiffs' claims for damages were barred, but declined to dismiss the claim for injunctive relief. On 18th April, 2006, the court held that the issuer claim could not proceed as a class action. On 11th September, 2007, the Second Circuit Court of Appeals vacated the 18th April decision and remanded the case for further proceedings on the issue of class certification. Following the remand, plaintiffs have moved for class certification of the issuer class, and the defendants have opposed class certification. The court has not issued a decision on the class certification issue.

### *IPO Allocation Litigation*

*In re Initial Public Offering Securities Litigation:* Merrill Lynch has been named as one of the defendants in approximately 110 securities class action complaints alleging that dozens of underwriter defendants, including Merrill Lynch, artificially inflated and maintained the stock prices of the relevant securities by creating an artificially high post-IPO demand for shares. On 13th October, 2004, the district court, having previously denied defendants' motions to dismiss, issued an order allowing certain of these cases to proceed against the underwriter defendants as class actions. On 5th December, 2006, the Second Circuit Court of Appeals reversed this order, holding that the district court erred in certifying these cases as class actions. On 27th September, 2007, plaintiffs again moved for class certification. On 21st December, 2007, defendants filed their opposition to plaintiffs' motion. The court has not issued a decision on the class certification issue.

### *Enron Litigation*

*Newby v. Enron Corp., et al.:* The parties are currently awaiting the Court's decision on Merrill Lynch's request to dismiss the case based on the Fifth Circuit's 19th March, 2007 decision rejecting class certification and the Supreme Court's 15th January, 2008 decision rejecting liability in another case, *Stoneridge Investment v. Scientific Atlanta*.

*Other Enron Litigation:* Over a dozen other actions have been brought against Merrill Lynch and other investment firms in connection with their Enron-related activities. There has been no adjudication of the merits of these claims.

### *Mortgage-Related Litigation*

*Merrill Lynch & Co. Shareholder Litigation:* Beginning on 30th October, 2007, purported class actions were filed in the United States District Court for the Southern District of New York against Merrill Lynch and certain present or former officers and directors on behalf of persons who acquired Merrill Lynch securities beginning as early as 3rd November, 2006 and ending as late as 7th November, 2007. Among other things, the complaints allege violations of the federal securities laws based on alleged false and misleading statements related to Merrill Lynch's exposure to collateralised debt obligations and the sub-prime lending markets. One such action is brought on

<sup>3</sup> Unless the context requires otherwise, "Merrill Lynch" means ML&Co. and its consolidated subsidiaries.

behalf of persons who exchanged the securities of First Republic Bank for the securities of Merrill Lynch in a merger that occurred on 21st September, 2007. Merrill Lynch intends to vigorously defend itself in these actions.

*Shareholder Derivative Actions:* Beginning on 1st November, 2007, purported shareholder derivative actions were brought in federal and state courts against certain present or former officers and directors of Merrill Lynch in which ML&Co. is named as a nominal defendant. The actions allege, among other things, breach of fiduciary duty, corporate waste, and abuse of control related to Merrill Lynch's exposure to collateralised debt obligations and the sub-prime lending markets. They also challenge the payment of alleged severance to Merrill Lynch's former chief executive officer and certain of the actions assert claims for contribution or indemnification on ML&Co.'s behalf. In addition, ML&Co. has received letters from law firms, on behalf of purported shareholders, demanding that the Board bring claims on behalf of Merrill Lynch against certain present and former directors and officers of Merrill Lynch based on allegations substantially similar to those that are alleged in the shareholder derivative actions described above. The Board, with the assistance of counsel, will review the claims made in the demand letters and determine whether the maintenance of the proposed derivative suits is in the best interests of ML&Co.

*ERISA Litigation:* Beginning on 13th November, 2007, purported class actions were filed in the United States District Court for the Southern District of New York against Merrill Lynch and certain of its present or former officers and directors on behalf of the Merrill Lynch 401(k) Savings and Investment Plan, Retirement Accumulation Plan, Employee Stock Ownership Plan and a class of similarly situated plan participants. The actions are pending in the United States District Court for the Southern District of New York. These actions challenge ML&Co.'s disclosures about its performance, business prospects and the attractiveness of ML&Co.'s stock between a variety of purported class periods, beginning as early as 1st January, 2004 and ending as late as 6th December, 2007. Merrill Lynch intends to vigorously defend itself in these actions.

*City of Cleveland v. Deutsche Bank Trust Company, et al.:* On 10th January, 2008, the City of Cleveland filed a lawsuit against twenty-one financial services firms, including Merrill Lynch, alleging that the securitisation of sub-prime mortgages created a "public nuisance" and that defendants are, therefore, liable for the cost incurred by the City of Cleveland related to foreclosures. The case was initially filed in the Cuyahoga County Common Pleas Court and was removed to the United States District Court for the Northern District of Ohio on 17th January, 2008. Plaintiff has filed a motion seeking an order remanding the case. Merrill Lynch intends to vigorously defend itself in this action.

*Regulatory Investigations:* Merrill Lynch is co-operating with the Commission and other regulators investigating sub-prime-related activities.

#### *Allegheny Energy Litigation*

*Merrill Lynch v. Allegheny Energy, Inc.:* On 24th September, 2002, Merrill Lynch filed an action in the United States District Court for the Southern District of New York against Allegheny Energy, Inc. The complaint alleged that Allegheny owed Merrill Lynch the final US\$115 million payment due in connection with Allegheny's purchase of Merrill Lynch's energy trading business and assets in 2001. The following day, Allegheny filed an action against Merrill Lynch in the Supreme Court of the State of New York claiming misrepresentations in connection with Merrill Lynch's sale of the energy trading business to Allegheny. On 18th July, 2005, following a bench trial, the court issued a decision holding that Allegheny is required to pay Merrill Lynch US\$115 million plus interest. On 31st August, 2007, the Second Circuit Court of Appeals reversed the district court's decision and remanded the case for further proceedings in the district court. In January 2008, Allegheny and Merrill Lynch settled the matter. Under the terms of the settlement, Allegheny will pay Merrill Lynch US\$50 million and Merrill Lynch will relinquish its interest in Allegheny Energy Supply LLC.

#### *Short Sales Litigation*

*Electronic Trading Group, LLC v. Banc of America Securities LLC, et al:* On 12th April, 2006, a purported class action was filed against eleven financial services firms, including Merrill Lynch, in the United States District Court for the Southern District of New York. The case alleged that the defendants violated federal antitrust laws by charging unearned fees on short sales by their clients even when they failed to borrow and/or deliver stock in support of those short sales. On 20th December, 2007, the court granted defendants' motion to dismiss. Plaintiffs have filed an appeal.

*Avenius v. Banc of America Securities LLC, et al:* On 22nd June, 2006, 37 purchasers of securities of NovaStar Financial filed an action against eleven financial services firms, including Merrill Lynch, in the California Superior Court in San Francisco. The case alleges that the defendants improperly depressed the price of NovaStar Financial shares by facilitating short sales that did not comply with regulatory requirements. On 17th July, 2007, the Superior Court of the State of California, County of San Francisco, rejected defendants' argument that state law claims of facilitating improper short sales were pre-empted by the federal securities laws. The court did not rule on the substance of the underlying claims. The defendants, including Merrill Lynch, are vigorously defending themselves against the claims.

*Overstock.com, Inc. v. Morgan Stanley & Co., et al:* On 2nd February, 2007, Overstock.com brought an action in the Superior Court of the State of California, County of San Francisco, against approximately a dozen investment banks, including Merrill Lynch, alleging that they violated state law by improperly facilitating short sales of Overstock.com, which artificially depressed the price of its shares. On 17th July, 2007, the Superior Court of the State of California, County of San Francisco, rejected defendants' argument that state law claims of facilitating improper short sales were pre-empted by the federal securities laws. The court did not rule on the substance of the underlying claims. The defendants, including Merrill Lynch, are vigorously defending themselves against the claims.

#### *Bank Sweep Programs Litigation*

*DeBlasio v. Merrill Lynch, et al:* On 12th January, 2007, a purported class action was brought against Merrill Lynch and three other securities firms in the United States District Court for the Southern District of New York alleging that their bank sweep programs violated state law because their terms were not adequately disclosed to customers. On 1st May, 2007, plaintiffs filed an amended complaint, which added additional defendants. On 12th November, 2007, defendants filed motions to dismiss the second amended complaint. Briefing on the motion is expected to be completed by 6th March, 2008.

#### *Private Equity Litigation*

*Davidson, et al., v. Bain Capital Partners, LLC, et al.:* On 28th December, 2007, a purported class action was brought against sixteen defendants, including Merrill Lynch, in the United States District Court for the District of Massachusetts. The complaint alleges that defendants conspired to limit competition in bidding for private-equity sponsored acquisitions of public companies in violation of the antitrust laws. Merrill Lynch intends to vigorously defend itself in this action.

#### *Employment Litigation*

*McReynolds v. Merrill Lynch:* On 18th November, 2005, a purported class action was filed in the United States District Court for the Northern District of Illinois seeking to certify a class of current and former African American Merrill Lynch employees, as well as African Americans who applied for employment. Plaintiff alleges that the firm has engaged in a pattern and practice of discrimination against African Americans in violation of federal Civil Rights statutes. Merrill Lynch is vigorously contesting these claims.

#### *Auction-Rate Litigation*

*Burton v. Merrill Lynch & Co., Inc., et al.; Stanton v. Merrill Lynch & Co., Inc., et al:* The parties are awaiting the court's decision on motions to consolidate the two actions and to appoint lead plaintiffs

and lead counsel. Merrill Lynch is also cooperating in government investigations related to its sale of auction rate securities.

*In re Public Offering Fee Antitrust Litigation and In re Issuer Plaintiff Initial Public Offering Fee Antitrust Litigation:* In May 2008, these matters were settled by all of the parties and dismissed.

*In the Matter of Merrill Lynch, Pierce, Fenner & Smith, Incorporated:* On 31st July, 2008, the Securities Division of the Commonwealth of Massachusetts filed an administrative complaint against Merrill Lynch. The complaint alleges that Merrill Lynch misrepresented and omitted material facts in connection with the sale of auction rate securities and seeks relief that includes an order requiring Merrill Lynch to offer rescission of sales of auction rate securities at par. Merrill Lynch also is cooperating in investigations by other regulators who have expressed an interest in obtaining relief for investors who have not been able to sell their auction rate securities.

#### *Subprime-Related Litigation*

The principal class actions under the federal securities laws and the Employee Retirement Income Securities Act ("ERISA"), as well as multiple shareholder derivative actions under state law, are pending in the U.S. District Court for the Southern District of New York under the heading *In re Merrill Lynch & Co., Inc. Securities, Derivative, and ERISA Litigation*.

*Securities Class Actions:* On 21st May, 2008, plaintiffs in the securities class actions filed a consolidated amended complaint on behalf of persons who acquired Merrill Lynch common stock and certain preferred stock between 17th October, 2006 and 16th January, 2008. The complaint alleges that the defendants, including Merrill Lynch and certain present and former officers, misrepresented and omitted facts related to Merrill Lynch's exposure to subprime collateralized debt obligations in violation of the federal securities laws. The complaint seeks damages in an unspecified amount related to the drop in value of Merrill Lynch shares. On 21st July, 2008, Merrill Lynch and other defendants filed motions to dismiss.

*ERISA Class Actions:* On 21st May, 2008, plaintiffs in the ERISA class actions filed a consolidated amended complaint on behalf of the Merrill Lynch 401(k) Savings and Investment Plan, the Merrill Lynch Retirement Accumulation Plan, and the Merrill Lynch Employee Stock Ownership Plan. The complaint alleges that between 25th September, 2006 and 6th May, 2008, Merrill Lynch and individual defendants violated ERISA by permitting employees to invest Plan assets in Merrill Lynch common stock even though they knew or should have known that such investments were unduly risky. The complaint seeks an order compelling defendants to reimburse the plans for losses of an unspecified amount related to the alleged violations. On 21st July, 2008, Merrill Lynch and the other defendants filed a motion to dismiss the action.

*Shareholder Derivative Actions:* On 21st May, 2008, plaintiffs in the shareholder derivative actions filed a consolidated amended complaint against Merrill Lynch and certain present and former officers and directors for alleged breaches of fiduciary duty and other alleged violations of state law in connection with Merrill Lynch's exposure to subprime collateralized debt obligations and compensation provided to its former CEO. The complaint seeks damages in an unspecified amount and certain corporate governance reforms. On 21st July, 2008, Merrill Lynch and other defendants filed motions to dismiss the action. On 24th July, 2008, N.A. Lambrecht filed a similar shareholder derivative action, *Lambrecht v. O'Neal, et al.*, in the U.S. District Court for the Southern District of New York. Lambrecht alleges that she made a demand on the Board of Directors to initiate suit on behalf of Merrill Lynch before she filed the derivative action, and that her demand was rejected. Merrill Lynch intends to vigorously defend itself in this action.

Merrill Lynch is also cooperating in government investigations related to its exposure to subprime collateralized debt obligations.

*XL Litigation:* On 19th March, 2008, Merrill Lynch International filed an action in the U.S. District Court for the Southern District of New York seeking a declaratory judgment that XL Capital Assurance Inc. and XL Admin LLC (collectively, "XL") continue to be bound by seven credit default swaps on collateralized debt obligations. On 10th June, 2008, the court granted Merrill Lynch's



motion for summary judgment on the ground that it was apparent from the face of the contracts that Merrill Lynch had not breached its contracts with XL. On 15th July, 2008, the Court issued an opinion setting forth the basis for its grant of summary judgment and stating that XL's termination of the swaps was without legal basis and that the contracts remain in effect.

### *GIC Litigation*

Between March and July 2008, multiple class actions were filed by municipalities against dozens of defendants, including Merrill Lynch, in connection with the municipalities' investments in guaranteed investment contracts ("GICs"). The complaints allege, among other things, that the defendants conspired to fix prices for GICs and other derivative products in violation of the antitrust laws over a period of more than ten years. On 16th June, 2008, the United States Judicial Panel on Multidistrict Litigation issued an order transferring the cases then before it to the U.S. District Court for the Southern District of New York which consolidated several cases under the caption *Hinds County, Mississippi v. Wachovia Bank, N.A. et al.* Merrill Lynch will vigorously defend itself in these matters.

### *Other*

Merrill Lynch has been named as a defendant in various other legal actions, including arbitrations, class actions, and other litigation arising in connection with its activities as a global diversified financial services institution. Some of the legal actions include claims for substantial compensatory and/or punitive damages or claims for indeterminate amounts of damages. In some cases, the issuers that would otherwise be the primary defendants in such cases are bankrupt or otherwise in financial distress. Merrill Lynch is also involved in investigations by governmental and self regulatory agencies.

Merrill Lynch believes it has strong defences to, and where appropriate, will vigorously contest, many of these matters. Given the number of these matters, some are likely to result in adverse judgments, penalties, injunctions, fines, or other relief. Merrill Lynch may explore potential settlements before a case is taken through trial because of the uncertainty, risks and costs inherent in the litigation process. In accordance with SFAS No. 5, Merrill Lynch will accrue a liability when it is probable that a liability has been incurred and the amount of the loss can be reasonably estimated. In many lawsuits, arbitrations and investigations, including most of the lawsuits specifically disclosed in ML&Co.'s public filings, it is not possible to determine whether a liability has been incurred or to estimate the ultimate or minimum amount of that liability until the matter is close to resolution, in which case no accrual is made until that time. In view of the inherent difficulty of predicting the outcome of such matters, particularly in cases in which claimants seek substantial or indeterminate damages, Merrill Lynch cannot predict what the eventual loss or range of loss related to such matters will be. Subject to the foregoing, Merrill Lynch continues to assess these matters and believes, based on information available to it, that the resolution of these matters will not have a material adverse effect on the financial condition of Merrill Lynch as set forth in ML&Co.'s consolidated financial statements, but may be material to Merrill Lynch's operating results or cash flows for any particular period and may impact ML&Co.'s credit ratings.

### **(9) Conditions for determining price**

The price and amount of Securities to be issued under the Programme will be determined by the Issuer and any Dealer at the time of issue in accordance with prevailing market conditions.

### **(10) Post-issuance Information**

The Issuers do not intend to provide any post-issuance information in relation to any issue of Securities.

**REGISTERED OFFICE OF MERRILL LYNCH S.A.**

Ballade B2  
4, rue Albert Borschette  
L-1246 Luxembourg  
Grand Duchy of Luxembourg

**REGISTERED OFFICE OF MERRILL LYNCH INTERNATIONAL & CO. C.V.**

Kaya W.F.G. (Jombi) Mensing 36,  
Curaçao  
Netherlands Antilles

**PRINCIPAL OFFICE OF MERRILL LYNCH & CO., INC.**

4 World Financial Center  
New York  
New York 10080  
United States of America

**DEALERS**

(in respect of Notes, Warrants and  
Certificates)

**Merrill Lynch International**  
Merrill Lynch Financial Centre  
2 King Edward Street  
London EC1A 1HQ  
United Kingdom

(in respect of Notes)

**Merrill Lynch Capital Markets**  
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