

ZENTRALER KREDITAUSSCHUSS

MITGLIEDER: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN · BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN · DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

**Comments of the
Zentraler Kreditausschuss
(German Banking Industry Committee)
on the**

Consultation Paper of 15 June 2011
*ESMA's technical advice on possible delegated acts
concerning the Prospectus Directive as amended by the Directive 2010/73/EU*

Ref.: ESMA 2011/141

15 July 2011

A. General remarks

Before replying in detail to the questions raised in the ESMA consultation paper and commenting on the proposals put forward in it, we should like to make the following general remarks:

1. Final terms

The proposed principle whereby only the information contained in an exhaustive list (“CAT A”, “CAT B” and “CAT C”) may be included in the final terms in future is inappropriate in our view. This will result in serious disadvantages for both investors and issuers:

a) The proposed extremely rigid procedure will unnecessarily cause issuers to completely abandon the present established issuing procedure, which supervisors find no fault with, as a new prospectus will probably almost always be necessary for new products and product variations. Because of the detailed product description required in the prospectus under the proposals, issuers will no longer be able to respond flexibly and promptly to market developments themselves. Instead, even where a product only has to be slightly adapted, they will have to initiate an approval procedure for a new prospectus or a supplement with their competent authority. This will lead to higher costs and expenses for issuers, and a response to market developments will no longer be possible with the required swiftness. The proposed procedure therefore urgently needs to be reconsidered. The schematic approach to the base prospectus regime adopted in the consultation paper should consequently be dropped in favour of a general principles-based approach.

b) Nor are there any improvements from an investor or consumer protection perspective. Through its categorisation of information about securities (“CAT A”, “CAT B” and “CAT C”) and the related mandatory inclusion of the information either in the base prospectus or in the final terms, the consultation paper (paragraph 30) rules out the possibility of including integrated terms for a securities issue in the final terms or adding these to the final terms as an annex. As a result, investors are prevented from obtaining a full picture of the relevant security in a single, binding document that contains all the information about the security. In Germany, this is established market practice that is recognised by supervisors. With the integrated conditions, also referred to as consolidated conditions, issuers also meet their transparency obligations under national civil law towards their clients. Provision of a transparent, readable version of the terms for the relevant issue in the form of a single document must therefore remain possible. Hence, the ban in paragraph 30 of the consultation paper on replicating information from the base prospectus for producing

integrated conditions in the final terms should not be applicable. For the legal arguments, see also our reply to question 2.

The proposed rigid procedure also fails to take into account the needs of **institutional clients**. When it comes to placement of customised products for institutional clients who refinance themselves via the capital market, it is important – against the backdrop of ongoing market activity – that clients’ requirements can be met quickly. This will no longer be possible in future. The strict categorisation of information about securities as “CAT A”, “CAT B” or “CAT C” means that changes in the client’s thinking and strategies may only be documented in a new prospectus or a supplement. This is, above all, time-consuming and costly.

c) A further consequence of the categorisation of information about securities as “CAT A”, “CAT B” and “CAT C” is that, according to the proposals in the consultation paper, **increases in the volume of securities issues during their maturity will no longer be possible**. This cannot be intended. In the case of bonds, the volume of an issue may at present be increased during the maturity. For example, the volume of a bond issue originally launched under a base prospectus valid in 2009 can be increased in 2011 without any trouble, by means of an agreement to this effect with the investor (bridge clause), in the final terms of the base prospectus issued in 2011 if there is a corresponding demand in the marketplace. Such a procedure does not put the investor at any disadvantage whatsoever, as all the information contained in the current base prospectus applies also to the respective increase and an issue-specific summary has to be provided for the increase as well. We therefore request that **bridge clauses allowing increases in the volume of securities issues be included as a further item in the list of “Additional Information” (Annex B)**.

2. Summary of the prospectus

We also take a critical view of the proposals concerning the summary. **In this connection, we are particularly against the approach of rigidly coupling the content of the summary to the content of the prospectus laid down in annexes to the Prospectus Regulation**. In our opinion, future prospectus summaries are likely to be quite expansive. As such, they will not, in particular, serve the aim of providing investors with helpful, comprehensible information. This could be avoided if an abstract general clause setting out the key information for investors were adopted instead. For this purpose, the five subparagraphs (i) – (v) contained in Article 2 (s) of the Amending Prospectus Directive could be used. In a second step, these principles could then be fleshed out with concrete

individual details, but without specifying any strict order in which this information should be listed.

Paragraphs 99 and 101 of the consultation paper recommend that the summary should not contain any wording which is identical with that in other sections of the prospectus. Because of the consistency of prospectus and summary called for in Article 6 (2) of the Prospectus Directive and the liability rules set out in the same article, this recommendation is impracticable and should therefore be urgently reconsidered.

According to paragraph 69 of the consultation paper, the issue-specific summary is to be subject to the same translation requirements as the summary of the base prospectus. However, this approach ignores the fact that the issue-specific summary is an integral part of the final terms and is thus subject just like these themselves to the language rules applying to the base prospectus. The proposal in paragraph 69 of the consultation paper is therefore clearly at odds with the provisions of Article 19 (3) of the Prospectus Directive. Such rules going further than the wording of the Prospectus Directive cannot be established at Level 2. Implementation of this ESMA proposal would contradict the aim of the revised Prospectus Directive (particularly Recitals 1 and 4), without this being required for investor protection-related reasons. We therefore request that paragraph 69 of the consultation paper be worded in conformity with the Prospectus Directive and that there be no translation requirement for the issue-specific summary. In addition, it should be made clear that, irrespective of any prior notification of the base prospectus, the final terms (including the issue-specific summary) should only have to be deposited in the host member states in which each tranche of securities is publicly offered.

3. Further concerns regarding amendment of the EU Prospectus Regulation

Taxation (sections 4.11 of Annex III, 27.11 and 28.11 of Annex X and 4.1.14 of Annex XII to the Implementing Regulation)

In the annexes to the Prospectus Regulation set out in the consultation document, we do not yet see any change in the taxation rules that we consider desirable. When reviewing the Prospectus Regulation, paragraph 45 of the *Frequently Asked Questions/Prospectuses: common positions agreed by CESR/ESMA Members* should be implemented to eliminate the discrepancy that has existed between the Prospectus Regulation and the FAQs since May 2008 and create legal certainty for prospectus issuers.

Having made these general remarks, we now wish to reply to the questions and comment on the proposals in the consultation document as follows:

B. Replies to questions/comments on proposals

I. Final terms

Q1: Do you consider the list of “Additional Information” in Annex B complete? If not, please indicate what type of information could be classified as? “Additional Information” and to what item they could belong to (CAT A, CAT B or CAT C, as defined in Part. 3.III). Please add your justifications.

In our view, the rigid rules governing the content of the final terms should be dropped. Furthermore, we believe that the proposed differentiation between “CAT B” and “CAT C” items, which would both generally qualify as potential genuine final terms content, is artificial. It would not take account of the sole relevant substantive decision criterion, namely if the information at hand could only be determined at the time of issuance.

Overall, we do not believe that limiting the “Additional Information” to an exhaustive list of items promotes investor protection; at the same time, it limits the flexibility of adding issue-specific information that is considered useful to the investor at the time of issuance. It is not possible to think of all such information items up front. If such a list is considered strictly necessary by ESMA, it should not any rate be cemented into a regulation but published instead by ESMA (e.g. Q&A Lists), thus allowing flexible additions from time to time when ESMA agrees that they are useful.

Following the consultation paper’s approach, the issuer ought to be completely free to additionally include non-mandatory information in the prospectus. Such additional items may, for example, be necessary for liability or issue management reasons. We are against an exhaustive list of such “permitted” additions. ESMA should carefully reconsider this proposal as well.

However, based on the general approach proposed in the consultation paper, at least the following items would need to be added as “Additional Information”:

- *Country-specific information*: In some cases, additional information is provided in the final terms regarding items relevant to the offer of the particular securities in a specific country. One example is information on the tax situation of the investor beyond the general tax situation required in the relevant annexes to the Prospectus Regulation. Given the variety of possible information, this should be classified as “CAT C”.
- *Inducements*: In some countries, many issuers choose to disclose the inducements paid to distributors to further enhance transparency for investors. This information would have to be classified as “CAT C”.
- *Selling restrictions*: Securities might be subject to selling restrictions, i.e. they may not be eligible for issue, offer or sale in certain jurisdictions or to certain persons. This information should be classified as “CAT C”.
- *Issuing volume*: Increasing the volume of the issue should generally continue to be possible. Agreements to this effect with the investor (bridge clauses) should continue to be possible (“CAT C”).
- *Transaction management*: Disclosure of special tax arrangements (TEFRA D/C); note structure for ECB collateral eligibility (NGN, CGN); publication media; form of distribution (syndicated/non-syndicated); information on stabilisation action.

Q2: As for the “additional provisions, not required by the relevant securities note, relating to the underlying” (included in Annex B), please provide the information which could fall under this item.

We reject any exhaustive list of “Additional Information”. The issuer should generally be free to include additional information in the prospectus and the final terms alongside the mandatory information. This goes also for the underlying of derivatives products.

With regard to indices such as, for example, the Euro Stoxx or DAX, it must certainly also be possible to point out in the final terms that their composition may change within the course of a year. Current developments on the commodities markets may also be of importance in this connection.

Integrated form of terms and conditions (paragraph 30)

Banning the well-established practice in some European markets (such as Germany) of including the integrated form of the terms and conditions of the securities in, or as an annex

to, the final terms (“integrated conditions” or “consolidated conditions”) would not only contradict the Amending Prospectus Directive’s intention to further increase the transparency and comprehensibility of securities prospectuses. It is also justified with an interpretation of the Prospectus Regulation which is, in our view, incorrect.

The consultation paper refers to Article 26 (5) of the Prospectus Regulation and argues that this provision allows the replication of some, but not all, of the information which has been included in the base prospectus according to the relevant securities note schedule.

However, the provision referred to, according to its clear wording (“*In the case that the final terms are included in a separate document ...*”), only applies in the first of the two alternatives mentioned in the preceding sentence of Article 26 (5) (“*The final terms ... shall be presented in the form of a separate document containing only the final terms ...*”), whereas the second alternative specified therein allows the final terms to be fully included in the base prospectus.

As regards the further reference to the Amending Prospectus Directive itself, Recital 17 must be read together with Article 5 (4), third subparagraph of the Directive and clearly only pertains to the delimitation with regard to information that requires a supplement to the base prospectus. An interpretation to the effect that the word “only” would prohibit the reproduction of the relevant parts of the base prospectus is not covered by the context.

Even apart from such legal considerations, the claim that the “integrated conditions” would be rendered unnecessary by the summary, as the latter would give “*a full picture to investors*”, is not convincing. The summary focuses on key information (Recital 15 and Article 5 (2) of the Amending Prospectus Directive). If the summary were to provide “*a full picture*”, there would be no reason for explicitly excluding that the summary as such triggers prospectus liability (Recital 16 of the Amending Prospectus Directive).

The proposed prohibition of “integrated conditions” should therefore not be upheld in our view.

In conclusion, we wish to point out by way of clarification that integrated or consolidated conditions are not a kind of short-form prospectus, as suggested in paragraph 30 of the consultation paper. Instead they consolidate the necessarily general terms and conditions set out in the base prospectus for a spectrum of products and combine them with the specific terms of a concrete issue in one document. This reduces the general terms and conditions to the final contractual bond terms applicable to the bond issue in question. This

makes it much easier for the investor to identify, read and understand the applicable binding key bond terms of a specific offering. An example of final terms containing such integrated conditions is attached to these comments (Enclosure 1). The integrated conditions are also used to constitute the global note representing the specific bond issue.

Q3: Under “CAT. B” items, is the list of details which can be filled out in the final terms complete? If not, please indicate with your justifications what elements should be added.

Restricting the set of information items which can be left open for the final terms creates excessive administrative and procedural burdens for issuers and thwarts the intention to enhance international competitiveness, without adding any additional information or protection for investors. For investors, it does not matter whether the information they receive is approved by the competent authority or not.

In our view, instead of the enumerative list of items eligible for inclusion in the final terms proposed in paragraph 44, permission should be given to add any kind of specific detailed information, such as amounts, currencies, etc., which is neither a legal rule nor a formula. Otherwise, excluding information which – also from the authorities’ point of view – only fills out the general information contained in the base prospectus would be highly risky. Just one example of such detailed information not covered by the proposal in the consultation paper is alternative assets – for example, certain shares – sometimes specified for determination of the payout or delivery amount in the event of market disruption.

In addition, we do not agree with the categorisation of some of the items in Annex A to the consultation paper, based on the proposed general approach.

Should the general approach be maintained, we propose some changes as summarised in the attached enclosure (Enclosure 2).

Payment formula (paragraphs 49 and 51)

Under Article 22(2) of Commission Regulation (EC) No 809/2004, the final terms cannot include any information beyond those items which can only be determined at the time of issuance. The references in paragraphs 49 and 51 of the consultation paper to an obligation

for authorities “to review algebraic formulas along with ... related definitions and descriptions as regards ... completeness, comprehensibility and consistency” is therefore not covered by the legal basis for the use of final terms. ESMA appears to take the view that, by its very nature, such information is not eligible for inclusion in the final terms even if it can only be determined at the time of issuance. Paragraph 51 further states that a new payout can be interpreted as a new product and for this reason has to be disclosed in the base prospectus. However, whilst it could be argued that information about a new product can always be provided before the associated securities are issued, the rules proposed in the consultation paper would also exclude minor variations of products described in the base prospectus, such as the addition of a minimum payout amount at the request of potential investors. Market demands of this kind cannot always be predicted when the base prospectus is drafted. This is exactly the sort of flexibility which the introduction of a base prospectus was meant to provide.

The proposed rules should therefore be modified to explicitly allow amendments to payment formulas as long as they merely adjust the product described in the base prospectus and do not turn the security into a different product.

Risk factors (paragraph 52)

A need to include additional risk factors in the final terms may arise from the specific nature of a certain kind of underlying which the base prospectus generally specifies for inclusion in the final terms (such as a market index replicating the performance of a market with certain investment risks). A general ban on risk factors in the final terms would thus, in practice, prevent issuers from choosing certain kinds of underlying.

Proprietary indices (paragraph 53)

It is unclear why issuers should not be able to include the description of an index composed by the issuer itself while the description of an index is permissible if it is composed by third-party service providers. This applies all the more given that these indices can often be easily substituted by baskets.

If the proposed ban is nevertheless introduced, it will be essential to at least clearly state that new risk factors and any new kind of underlying (including proprietary indices composed by the issuer) may be included in a supplement to the base prospectus. Some authorities do not currently allow this, so a new (base or stand-alone) prospectus would otherwise have to be filed, resulting in a lengthy approval procedure.

Q4: Based on the instructions given in this document, could you please estimate the increase of the number of supplements to be approved in per cent?

Owing to the rigid rules proposed in the consultation paper and given that issuers do not normally know how the market will develop over the next 12 months (the validity period of the base prospectus), more base prospectuses and supplements will need to be drafted and submitted for approval. This will make the issuing process lengthier and more expensive. To make matters worse, there has just been a sharp increase in the cost of getting base prospectuses and supplements approved in Germany.

It is not possible to give a precise estimate because issuing practices will change significantly if ESMA's proposals are implemented in their present form. We assume, however, that the number of documents (base prospectuses and supplements) needing approval will more than double – or even much more than double in the case of supplements. When assessing the impact of the proposed changes it is also important to consider the number of transactions that will no longer occur because the market window is too short for a supplement to be approved. The whole point of an issuance programme is to enable transactions to be carried out quickly without having to go back to the competent authority for approval.

Q5: Based on the instructions given in this document, could you estimate the increase of the relevant costs?

As explained in our reply to question 4, it is difficult to make a reliable estimate. It is beyond question, however, that each additional prospectus and each additional supplement generates substantial internal costs for issuers. These are compounded by approval costs, which in Germany are not inconsiderable. Given the number of issues, the total increase is likely to be substantial.

Q6: Do you agree with the proposed mechanism of combining the summary with the final terms? If not, please provide your reasons and an alternative suggestion.

No, we do not agree. We understand that the Amending Directive has made it necessary to combine the final terms and the summary. But we believe the proposed mechanism for doing so should be reconsidered. A much more principles-based approach to the content of the summary would be preferable (cf. our reply to questions 8 to 10).

It is essential, in any event, to ensure consistency between the new requirements for the summary and the planned rules governing PRIPs. We see no sense in providing the investor with more than one information sheet on the same issue (prospectus summary and PRIPs document). This would not least raise the question as to which document the investor should consider binding.

We also consider it unnecessary to attach the summary to the final terms and send it to other competent authorities again. The summary, as part of the base prospectus, is made available to all investors through one of the accepted channels of publication. It could simply contain placeholders for key information just as the rest of the base prospectus. These placeholders could be completed with the relevant information in the final terms by reading the two documents together.

Q7: Please estimate any possible costs that this mechanism would imply for issuers.

Compiling a summary for every single issue will generate significant additional costs for issuers.

II. Summary – key information

Q8: Do you agree with our modular approach?

Q9: Do you agree with our approach of identifying the mandatory key information to be contained within five sections?

Q10: Do you agree that we have provided sufficient flexibility for issuers and their advisers in drafting summaries – whilst ensuring that summaries are brief and provide the reader with the necessary comparability between prospectuses?

No, we do not agree with your proposals. The required content of summaries should not, in our view, be based on the items in the relevant annexes to the Prospectus Regulation. Such an approach bears the risk of making the summary too long. It would also impose an order and form on the summary which would make it more difficult for investors to understand. Furthermore, the proposed rigid requirements for the content and the order in which it appears would not allow a summary to be tailored to the specific nature of the individual security. It might not be possible to include information which, though relevant, did not fit the standard template. Nor would it be possible to change the order of presentation, even if this would make the information easier to understand.

It would therefore be preferable to require the content of a summary to satisfy abstract criteria. These criteria should be set independently of the security classification system underlying the annexes to the Prospectus Regulation. Though the points included should take account of the items defined as key information by the Amending Directive, they should not simply mirror these items.

The design of the summary template(s) should be coordinated with the development of the Key Investor Information Document to be introduced as part of the PRIPs initiative. The template(s) should also function as a summary to a full prospectus.

At the very least, the suggested points in the proposed sections should not have to be set out in a strict order. Though aiming to ensure maximum comparability between different securities, this approach would, in reality, make the summary much less “reader-friendly” since it would not be possible to place information where it made most sense when describing the security in question.

Q11a: Do you agree that our approach adequately limits the length of summaries?

No, we do not agree. On the contrary, we believe there is a substantial risk that many summaries will be too long. The proposed requirements with respect to content will not allow issuers to take a holistic approach when drafting a summary.

Q11b: What is “short” for a summary for: (i) an issuer; & (ii) an investor?

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Q11c: Do you think that there should be a numeric limit on the length of summaries? If so, how might that be done?

In our view, the question of whether or not a summary is “short” always depends on the circumstances surrounding the individual prospectus. There should therefore be no numeric limit to the length of summaries. In some cases at least, a limit would force issuers to leave out information they regard as material and relevant for investors. This would both undermine compliance with the general objective of the summary and give rise to legal risk. A numeric limit would also be incompatible with the proposed detailed rules on the content of the summary.

Q12a: Do you agree with our proposed content and format for summaries?

We do not agree with the proposed ban on including additional information over and above the items contained in sections A to E. The same considerations apply here to additional information not envisaged in the applicable annexes to the Prospectus Regulation as those applying to the final terms part of the full prospectus. Naturally, any such additional information must pass the materiality test for inclusion in the summary. Additional data relating to the underlying may be considered material and relevant, for instance.

Q12b: Are there other pieces of information which should appear in summaries? and are there disclosure requirements in our tables which are not needed for summaries?

Should the proposed one-size-fits-all approach to summaries be retained, we have the following comments on the envisaged detailed disclosure requirements:

- **Point B.15:** The issuer’s competitive position should not have to be disclosed. This goes beyond the requirements for the full prospectus, where the relevant annexes only require the “*basis for any statements in the registration document made by the issuer regarding its competitive position*”.

- Points C.5, C.6, C.9, C.10, C.11, C.12, C.16 to C.21: For debt and derivative securities, these points constitute the core part of the description of the payout or other entitlements attached to the respective securities. Requiring this information to be presented in a strict predetermined order would seriously impair the reader-friendliness of the summary. It will often make sense, for example, to combine the required “*brief description of how the value of the investment is affected by the value of the underlying instrument(s)*” (C.16) with the overall description “*of the rights attached to the securities*” (C.5) and to put the information required under C.16 to C.21 together with the other detailed payout information required under C.9 to C.11 instead of only after the above description. At least where the above-mentioned items are concerned, the predefined order should be replaced with bullet points that leave the exact positioning of the information up to the issuer.
- Point E.7 requires the disclosure of estimated expenses charged to the investor by the issuer or the offeror, as envisaged in Article 2(1)(s)(iii) of the directive. Often, however, issuers do not know the expenses charged to the investor by the offeror. It is unclear how the expenses charged to the investor by the offeror are supposed to be estimated in such cases if, indeed, it is possible to estimate them at all.

Q13: Is there a need to augment Point B.9 with additional disclosure requirements, such as key assumptions, or to state that the forecast is reported on in the main body of the prospectus?

No. We believe it would make little sense to pick out individual aspects and subject them to special treatment.

Q14: Do you agree with our proposal for amending Article 3, 3rd paragraph, Prospectus Regulation?

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Q15: Could you estimate the change in costs that will arise from the proposals in this document for summaries?

The proposed requirements for summaries will also make issues significantly more costly since the preparation of these documents will be more onerous and time-consuming and the

issuing process will become considerably more drawn-out. We anticipate a sharp rise in the number of base prospectuses and supplements, especially given that it is not possible to describe all conceivable products in detail in the base prospectus. The drawback to a large number of “smaller” base prospectuses is not just the time and cost associated with obtaining approval, but also the fact that the description of the issuer has to be continually updated. This costs time and money too. A precise estimate is not, however, possible. See also our reply to question 4.

IV. Proportionate disclosure regime regarding SMEs and issuers with reduced market capitalisation

As a general rule, requirements should be the same for all enterprises in a particular market.

Nevertheless, the banking industry is also interested in making the capital market attractive to small and medium-size enterprises (SMEs) in order to enable them to select the most affordable type of corporate financing from a broad range of options. Various current initiatives of European exchanges take account of the special requirements of such enterprises, such as the need for a less complex and cost-intensive reporting regime. Take, for instance, the initiative by Deutsche Börse AG. Among other things, it has created a so-called Entry Standard to provide SMEs with a simple, fast and cost-efficient mode of gaining admission to exchange trading. The Entry Standard is a sub-segment of the OTC market, which is not an organised market within the meaning of the MiFID. Enterprises opting for a listing in this sub-segment typically seek a more visible position in the OTC market and wish to provide the capital market with more information than is normal in the OTC market. The stricter, and thus more cost-intensive, requirements of the organised market do not, however, have to be satisfied. Similar initiatives exist at other European exchanges such as the London Stock Exchange, which has created the Alternative Investment Market (AIM).

On the other hand we, like ESMA (paragraph 139), have reservations about the idea of establishing a sub-market within the organised market with less stringent requirements. The term “*organised market*”, which originates from MiFID, is used for state approved and supervised markets. In consequence, an enterprise’s admission to such a market must be seen as an indication of quality on which not least investors can rely (investor protection). If SMEs were subject to less stringent disclosure standards than were other enterprises traded on such markets, this might have an adverse impact on the overall perception that

“*organised market*” stands for quality. We therefore advise caution when considering a simplified regime for SMEs.

V. Proportionate disclosure regime regarding credit institutions and other issuers

Q46: Do you agree with the proposal to require historical financial information covering only the last financial year for credit institutions issuing securities referred to in Article 1(2)(j) of the Prospectus Directive?

We welcome this proposal.

Q47: “In performing its work on the proportionate disclosure regime, ESMA has sought to identify all possible omissions with regards to content of prospectuses as part of this Consultation Paper, however do you believe that further omissions are possible particularly with respect to the areas indicated in the request for advice by the Commission”

We would like to stress that the points considered in paragraph 144 also apply to credit institutions which have elected to opt into the prospectus regime. This goes, for instance, for items 2.1 and 3.1 of Annex V (“*are/is material*”), and item 9.1 (“*significant*”) and 11.7 of Annex XI.

We also consider information about interim financial statements (item 11.5 of Annex XI) to be unnecessary.

In addition, the proposed omissions associated with the proportionate disclosure regime for credit institutions should be linked only to the issuance of the securities referred to in Article 1(2)(j) and not limited to annual issues of less than 75 million euros.

In case of Notes listed on the official list and admitted to trading on the Regulated Market (which is a regulated market for the purposes of the Market and Financial Instruments Directive 2004/39/EC) of the Luxembourg Stock Exchange, the Final Terms will be displayed on the website of the Luxembourg Stock Exchange (www.bourse.lu).

██████████ 2010
██████████ 2010

Final Terms
Endgültige Bedingungen

€ 100,000,000 4.00% Notes due ██████████ 2014 (the "Notes")
€ 100.000.000 4,00% Schuldverschreibungen fällig ██████████ 2014 (die "**Schuldverschreibungen**")

issued pursuant to the
begeben aufgrund des

€ 500,000,000
Debt Issuance Programme

of
der

████████████████████

and
und

████████████████████

Last updated on ██████████ 2010
Zuletzt aktualisiert am ██████████ 2010

Issue Price: 99.721%
Ausgabepreis 99,721 %

Issue Date: ██████████ 2010
Valutierungstag: ██████████ 2010

Serie No.: 3
Serien Nr.:3

These are the Final Terms of an issue of Notes under the € 500,000,000 Debt Issuance Programme of ██████████ and ██████████ (the "**Programme**"). Full information on ██████████ and the offer of the Notes is only available on the basis of the combination of the Debt Issuance Programme Prospectus last updated on ██████████ 2010 (the "**Prospectus**"), as supplemented and these Final Terms. The Prospectus and any supplement to the Prospectus are available for viewing in electronic form on the website of the Luxembourg Stock Exchange (www.bourse.lu), on the website of ██████████ (www.██████████.com) and copies may be obtained at ██████████, Federal Republic of Germany, and ██████████, Ireland.

Dies sind die Endgültigen Bedingungen einer Emission von Schuldverschreibungen unter dem € 500.000.000 Debt Issuance Programm der ██████████ und der ██████████ (das "**Programm**"). Vollständige Informationen über ██████████ und das Angebot der Schuldverschreibungen sind nur verfügbar, wenn die Endgültigen Bedingungen und der Debt Issuance Programme Prospekt zuletzt aktualisiert am 12. Februar 2010 (der "**Prospekt**") einschließlich etwaiger Nachträge zum Prospekt zusammengenommen werden. Der Prospekt sowie jeder Nachtrag zum Prospekt kann in elektronischer Form auf der Internetseite der Wertpapierbörse Luxemburg (www.bourse.lu) und der Internetseite der ██████████ (www.██████████.com) eingesehen werden. Kopien sind erhältlich bei ██████████, Bundesrepublik Deutschland, und bei ██████████, Irland.

Part I.: TERMS AND CONDITIONS
Teil I.: ANLEIHEBEDINGUNGEN

The Integrated Conditions applicable to the Notes and the German or English language translation thereof, if any, are attached hereto. They replace in full the Terms and Conditions of the Notes as set out in the Prospectus take precedence over any conflicting term set forth in this part I of the Final Terms.

Die für die Schuldverschreibungen geltenden konsolidierten Bedingungen und eine etwaige deutsch- oder englischsprachige Übersetzung sind diesen Endgültigen Bedingungen beigefügt. Die konsolidierten Bedingungen ersetzen in vollem Umfang die im Prospekt abgedruckten Anleihebedingungen und gehen etwaigen abweichenden Bestimmungen des Teil I dieser Endgültigen Bedingungen vor.

Issuer

Emittentin

- [REDACTED]
 [REDACTED] FINANCE PLC

Form of Conditions

Form der Bedingungen

- Long-Form
Nicht-konsolidierte Bedingungen
 Integrated
Konsolidierte Bedingungen

Language of Conditions

Sprache der Bedingungen

- German only
ausschließlich Deutsch
 English only
ausschließlich Englisch
 English and German (English controlling)
Englisch und Deutsch (englischer Text maßgeblich)
 German and English (German controlling)
Deutsch und Englisch (deutscher Text maßgeblich)

CURRENCY, DENOMINATION, FORM, CERTAIN DEFINITIONS (§ 1)

WÄHRUNG, STÜCKELUNG, FORM, DEFINITIONEN (§ 1)

Currency and Denomination

Währung und Stückelung

Specified Currency <i>Festgelegte Währung</i>	Euro ("€") Euro ("€")
Aggregate Principal Amount <i>Gesamtnennbetrag</i>	€ 100,000,000 € 100.000.000
Specified Denomination(s) <i>Festgelegte Stückelung/Stückelungen</i>	€ 1,000 € 1.000
Minimum Principal Amount for Transfer (specify) <i>Mindestnennbetrag für Übertragungen (angeben)</i>	
<input checked="" type="checkbox"/> Number of Notes to be issued in each Specified Denomination <i>Anzahl der in jeder festgelegten Stückelung auszugebenden Schuldverschreibungen</i>	100,000 100.000
New Global Note New Global Note	No Nein

TEFRA C
TEFRA C

Permanent Global Note
Dauerglobalurkunde

TEFRA D
TEFRA D

Temporary Global Note exchangeable for Permanent
Global Note
*Vorläufige Globalurkunde austauschbar gegen
Dauerglobalurkunde*

Neither TEFRA D nor TEFRA C
Weder TEFRA D noch TEFRA C

Permanent Global Note
Dauerglobalurkunde

Certain Definitions

Definitionen

Clearing System
Clearingsystem

Clearstream Banking AG, Frankfurt am Main, ("**CBF**")
Neue Börsenstraße 1
60487 Frankfurt am Main
Federal Republic of Germany

Euroclear Bank SA/NV ("**Euroclear**")
1 Boulevard du Roi Albert II
1210 Brussels
Belgium

Clearstream Banking société anonyme, Luxembourg, ("**CBL**")
42 Avenue JF Kennedy
1855 Luxembourg
Luxembourg

Other (specify)
Sonstige (angeben)

Calculation Agent
Berechnungsstelle

No
Nein

Fiscal Agent
Emissionsstelle

Other (specify)
Sonstige (angeben)

Conditions incorporated by reference

Yes
Ja

Einbezogene Bedingungen

Procedural provisions regarding resolutions of Holders (Schedule 5 of
Agency Agreement), on display on: www.bourse.lu
*Verfahrensrechtliche Bestimmungen für Gläubigerbeschlüsse (Schedule 5
des Agency Agreements), einsehbar unter: www.bourse.lu*

Other (specify details)
Andere (Einzelheiten einfügen)

INTEREST (§ 3)
ZINSEN (§ 3)

Fixed Rate Notes

Festverzinsliche Schuldverschreibungen

Rate of Interest and Interest Payment Dates
Zinssatz und Zinszahlungstage

Rate of Interest Zinssatz	4.00% per annum 4,00% per annum
Interest Commencement Date Verzinsungsbeginn	██████████ 2010 ██████████ 2010
Fixed Interest Date(s) Festzinstermine	██████ April in each year ██████ April in jedem Jahr
First Interest Payment Date Erster Zinszahlungstag	██████ April 2011 ██████ April 2011
Initial Broken Amount(s) (for the Specified Denomination) Anfängliche(r) Bruchteilzinsbetrag(-beträge) (für die festgelegte Stückelung)	€ 20.38 € 20,38
Fixed Interest Date preceding the Maturity Date Festzinstermine, der dem Fälligkeitstag vorangeht	
Final Broken Amount(s) (per Specified Denomination) Abschließende(r) Bruchteilzinsbetrag(-beträge) (für jede festgelegte Stückelung)	
Adjustment of interest rate because of rating change Anpassung des Zinssatzes aufgrund einer Rating-Änderung	
Change of the Rate of Interest Änderung des Zinssatzes	

Day Count Fraction
Zinstagequotient

- Actual/Actual (ICMA Rule 251)
- Actual/Actual (ICMA)
- Actual/Actual (ISDA)
- Actual/365 (Fixed)
- Actual/360
- 30/360 or 360/360 (Bond Basis)
- 30E/360 (Eurobond Basis)

PAYMENTS (§ 4)
ZAHLUNGEN (§ 4)

Payment Business Day
Zahlungstag

Relevant Financial Center(s) (specify all) Relevante(s) Finanzzentren(um) (alle angeben)	TARGET TARGET
---	------------------

REDEMPTION (§ 5)
RÜCKZAHLUNG (§ 5)

Final Redemption
Rückzahlung bei Endfälligkeit

Notes other than Instalment Notes
Schuldverschreibungen außer Raten-Schuldverschreibungen

Maturity Date
Fälligkeitstag

22 April 2014
 22. April 2014

Redemption Month
Rückzahlungsmonat

Final Redemption Amount
Rückzahlungsbetrag

- Principal amount
Nennbetrag
- Final Redemption Amount (per denomination)
Rückzahlungsbetrag (für jede Stückelung)

Instalment Notes
Raten-Schuldverschreibungen

Early Redemption
Vorzeitige Rückzahlung

Early Redemption at the Option of the Issuer No
Vorzeitige Rückzahlung nach Wahl der Emittentin Nein

Early Redemption at the Option of a Holder No
Vorzeitige Rückzahlung nach Wahl des Gläubigers Nein

Early Redemption as a Result of a Change of Control Yes
Vorzeitige Rückzahlung im Falle eines Kontrollwechsels Ja

Early Redemption Amount
Vorzeitiger Rückzahlungsbetrag

Zero Coupon Notes:
Nullkupon-Schuldverschreibungen:

Addition of accrued interest
Aufzinsung

Reference Price
Referenzpreis

Amortisation Yield
Emissionsrendite

Deduction of unaccrued interest
Abzinsung

Amortisation Yield
Emissionsrendite

Dual Currency Notes
Doppelwährungs-Schuldverschreibungen:

(set forth details in full here (including exchange rate(s)
 or basis for calculating exchange rate(s) to determine
 principal/fall-back provisions))
*(Einzelheiten einfügen (einschließlich Wechselkurs(e)
 oder Grundlage für die Berechnung des/der
 Wechselkurs(e) zur Bestimmung von Kapitalbeträgen/
 Ausweichbestimmungen))*

- Index Linked Notes**
Indexierte Schuldverschreibungen
(set forth details in full here or in an attachment)
(Einzelheiten hier oder in einer Anlage einfügen)
- Instalment Notes**
Indexierte Schuldverschreibungen
(set forth details in full here or in an attachment)
(Einzelheiten hier oder in einer Anlage einfügen)
- Other structured Floating Rate Notes**
Sonstige strukturierte variabel verzinsliche Schuldverschreibungen
(set forth details in full here or in an attachment)
(Einzelheiten hier oder in einer Anlage einfügen)
- Other Notes**
Sonstige Schuldverschreibungen
(set forth details in full here (including basis for calculating principal/fall-back provisions))
(Einzelheiten einfügen (einschließlich der Grundlagen für die Berechnung der Kapitalbeträge/ Ausweichbestimmungen))

FISCAL AGENT AND PAYING AGENTS (§ 6)
EMISSIONSSTELLE UND ZAHLSTELLEN (§ 6)

Fiscal Agent
Emissionsstelle

- 
Federal Republic of Germany

- Other (specify)
sonstige (angeben)

Paying Agent(s)
Zahlstelle(n)

- 
Federal Republic of Germany

- 
Luxembourg

- Other (specify)
sonstige (angeben)

Calculation Agent/specified office
Berechnungsstelle/bezeichnete Geschäftsstelle

Required location of Calculation Agent (specify)
Vorgeschriebener Ort für Berechnungsstelle (angeben)

AMENDMENT OF THE TERMS AND CONDITIONS; HOLDERS' REPRESENTATIVE (§ 11)
ÄNDERUNG DER ANLEIHEBEDINGUNGEN, GEMEINSAMER VERTRETER (§ 11)

Majority requirements
Mehrheitserfordernisse

Qualified majority: 75%
Qualifizierte Mehrheit: 75%

- Appointment of a Holders' Representative by resolution passed by Holders
Bestellung eines gemeinsamen Vertreters der Gläubiger durch Beschluss der Gläubiger
- Appointment of a Holders' Representative in the Conditions
Bestellung eines gemeinsamen Vertreters der Gläubiger in den Bedingungen

Name and address of the Holders' Representative (specify details)
Name und Anschrift des Gemeinsamen Vertreters (Einzelheiten einfügen)

NOTICES (§ 14)
MITTEILUNGEN (§ 14)

Place and medium of publication
Ort und Medium der Bekanntmachung

- Federal Republic of Germany (electronic Federal Gazette)
Bundesrepublik Deutschland (elektronischer Bundesanzeiger)
- Federal Republic of Germany (Börsen-Zeitung)
Bundesrepublik Deutschland (Börsen-Zeitung)
- Luxembourg (Website of the Luxembourg Stock Exchange (www.bourse.lu))
Luxembourg (Internetseite der Luxemburger Börse (www.bourse.lu))
- Clearing System
Clearingsystem
- Other (specify)
Sonstige (angeben)

Governing Law
Anwendbares Recht

German Law
Deutsches Recht

Part II.: ADDITIONAL INFORMATION
Teil II.: ZUSÄTZLICHE INFORMATION

Additional Risk Factors
Zusätzliche Risikofaktoren

Interests of natural and legal persons involved in the issue/offer
Interessen von Seiten natürlicher und juristischer Personen, die an der Emission/dem Angebot beteiligt sind

- Save as discussed in the Prospectus under "Interest of Natural and Legal Persons involved in the Issue/Offer", so far as the Issuer is aware, no person involved in the offer of the Notes has an interest material to the offer.
Mit Ausnahme der im Prospekt im Abschnitt "Interest of Natural and Legal Persons Involved in the Issuer/Offer" angesprochenen Interessen bestehen bei den an der Emission beteiligten Personen nach Kenntnis der Emittentin keine wesentlichen Interessen an dem Angebot.
- Other interest (specify)
Andere Interessen (angeben)

Reasons for the offer
Gründe für das Angebot

Estimated net proceeds	€ 99,221,000.00
<i>Geschätzter Nettobetrag der Erträge</i>	€ 99.221.000,00

Estimated total expenses of the issue	€ 18,000
<i>Geschätzte Gesamtkosten der Emission</i>	€ 18.000

Eurosystem eligibility

EZB-Fähigkeit

Intended to be held in a manner which would allow Eurosystem eligibility	Not applicable
<i>Soll in EZB-fähiger Weise gehalten werden</i>	<i>Nicht anwendbar</i>

Securities Identification Numbers

Wertpapierkennnummern

Common Code	05	
<i>Common Code</i>	05	
ISIN	DE000A1	
<i>ISIN</i>	DE000A1	
Any other securities number	A1	(German Securities Code (WKN))
<i>Sonstige Wertpapierkennnummer</i>	A1	<i>(Wertpapierkennnummer (WKN))</i>

Yield	4.093% per annum
Rendite	4,093% per annum

Method of calculating the yield

Berechnungsmethode der Rendite

- ICMA method: The ICMA method determines the effective interest rate of notes taking into account accrued interest on a daily basis
ICMA Methode: Die ICMA Methode ermittelt die Effektivverzinsung von Schuldverschreibungen unter Berücksichtigung der täglichen Stückzinsen
- Other method (specify)
Andere Methoden (angeben)

Selling Restrictions

Verkaufsbeschränkungen

The Selling Restrictions set out in the Prospectus shall apply.
Es gelten die im Prospekt wiedergegebenen Verkaufsbeschränkungen.

- TEFRA C
TEFRA C
- TEFRA D
TEFRA D
- Neither TEFRA C nor TEFRA D
Weder TEFRA C noch TEFRA D

Non-exempt Offer	not applicable
<i>Nicht-befreites Angebot</i>	<i>nicht anwendbar</i>

Additional Selling Restrictions (specify)
Zusätzliche Verkaufsbeschränkungen (angeben)

Taxation

Besteuerung

Information on taxes on the income from the Notes withheld at source in respect of countries where the offer is being made or admission to trading is being sought
Informationen über die an der Quelle einbehaltene Steuer auf Schuldverschreibungen hinsichtlich der Länder in denen das Angebot unterbreitet oder die Zulassung zum Handel beantragt wird.

None
Keine

Restrictions on the free transferability of the Notes
Beschränkung der freien Übertragbarkeit der Schuldverschreibungen

None
 Keine

Method of distribution
Vertriebsmethode

- Non-syndicated
Nicht syndiziert
- Syndicated
Syndiziert

Date of Subscription Agreement
Datum des Übernahmevertrags

14 October 2010
 14. Oktober 2010

Management Details including form of commitment
Einzelheiten bezüglich des Bankenkonsortiums
einschließlich der Art der Übernahme

Dealer/Management Group (specify, including name and address)
Plazeur/Bankenkonsortium (angeben, einschließlich Name und Adresse angeben)

[REDACTED]

[REDACTED]
 Federal Republic of Germany

- firm commitment
feste Zusage
- no firm commitment/best efforts arrangements
ohne feste Zusage/zu den bestmöglichen Bedingungen

Commissions
Provisionen

Management/Underwriting Commission (specify)
Management- und Übernahmeprovision (angeben)

0.50%
 0,50%

Selling Concession (specify)
Verkaufsprovision (angeben)

Listing Commission (specify)
Börsenzulassungsprovision (angeben)

Other (specify)
Andere (angeben)

Stabilising Dealer/Manager
Kursstabilisierender Dealer/Manager

[REDACTED]

Admission to Trading
Börsenzulassung(en)

Yes
 Ja

- Regulated Market "Bourse de Luxembourg"
Luxemburg (Regulierter Markt "Bourse de Luxembourg")
- Frankfurt am Main
- Other (insert details)
Sonstige (Einzelheiten einfügen)

Expected date of admission
Erwarteter Termin der Zulassung

██████████ 2010
 ██████████ 2010

Estimate of the total expenses related to admission to trading
Geschätzte Gesamtkosten für die Zulassung zum Handel

Regulated markets or equivalent markets on which, to the knowledge of the Issuer, notes of the same class of the notes to be offered or admitted to trading are already admitted to trading
Angabe sämtlicher regulierter oder gleichwertiger Märkte, auf denen nach Kenntnis der Emittentin Schuldverschreibungen der gleichen Wertpapierkategorie, die zum Handel angeboten oder zugelassen werden sollen, bereits zum Handel zugelassen sind

- Luxembourg (Regulated Market "Bourse de Luxembourg")
Regulierter Markt "Bourse de Luxembourg"
- Frankfurt am Main
- Other (insert details)
Sonstige (Einzelheiten einfügen)

Name and address of the entities which have committed themselves to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment

Name und Anschrift der Institute, die aufgrund einer Zusage als Intermediäre im Sekundärhandel tätig sind und Liquidität mittels Geld- und Briefkursen erwirtschaften, und Beschreibung der Hauptbedingungen der Zusagevereinbarung

not applicable
 nicht anwendbar

Rating
Rating

Issue: BBB
Issue: BBB

Guarantor: BBB+
Garantin: BBB+

Other relevant terms and conditions (specify)
Andere relevante Bestimmungen (einfügen)

Listing:
Börsenzulassung:

The above Final Terms comprise the details required to list this issue of Notes (as from ██████████ 2010) pursuant to the € 500,000,000 Debt Issuance Programme of ██████████.
Die vorstehenden Endgültigen Bedingungen enthalten die Angaben, die für die Zulassung dieser Emission von Schuldverschreibungen (ab dem ██████████ 2010) gemäß dem € 500.000.000 Debt Issuance Programme der ██████████ erforderlich sind.

Responsibility
Verantwortlichkeit

The Issuer accepts responsibility for the information contained in the Final Terms as set out under the heading "**Responsibility Statement**" of the Prospectus, provided that, with respect to any information included herein and specified to be sourced from a third party (i) the Issuer confirms that any such information has been accurately reproduced and as far as the Issuer is aware and is able to ascertain from information available to it from such third party, no facts have been omitted, the omission of which would render the reproduced information inaccurate or misleading and (ii) the Issuer has not independently verified any such information and accepts no responsibility for the accuracy thereof.

*Die Emittentin übernimmt für die Verantwortung für die in diesen Endgültigen Bedingungen enthaltenen Informationen wie im Abschnitt "**Responsibility Statement**" des Prospekts bestimmt. Hinsichtlich der hierin enthaltenen und als solche gekennzeichneten Informationen von Seiten Dritter gilt Folgendes: (i) Die Emittentin bestätigt, dass diese Informationen zutreffend wiedergegeben worden sind und – soweit es der Emittentin bekannt ist und sie aus den von diesen Dritten zur Verfügung gestellten Informationen ableiten konnte – wurden keine Fakten ausgelassen, deren Fehlen die reproduzierten Informationen unzutreffend*

oder irreführend gestalten würden; (ii) die Emittentin hat diese Informationen nicht selbständig überprüft und übernimmt keine Verantwortung für ihre Richtigkeit.

■■■■■■ FINANCE PLC

[Name & title of signatory]

[Name und Titel des Unterzeichnenden]

This Series of Notes is issued pursuant to an amended and restated Fiscal Agency Agreement dated as of 12 February 2010 (the "**Agency Agreement**") between [REDACTED] ("[REDACTED]") and [REDACTED] FINANCE PLC ("[REDACTED] plc") (each an "**Issuer**" and together the "**Issuers**") and [REDACTED] as fiscal agent (the "**Fiscal Agent**" which expression shall include any successor fiscal agent thereunder) and the other parties named therein. Copies of the Agency Agreement may be obtained free of charge at the specified office of the Fiscal Agent, at the specified office (see § 6 (1) of the Terms and Conditions) of any Paying Agent and at the head office of any of the Issuers.

TERMS AND CONDITIONS (ENGLISH LANGUAGE VERSION)

§ 1

CURRENCY, DENOMINATION, FORM, CERTAIN DEFINITIONS

- (1) *Currency; Denomination.* This Series of Notes (the "**Notes**") of [REDACTED] Finance PLC (the "**Issuer**") is being issued in Euro ("€") (the "**Specified Currency**") in the aggregate principal amount of € 100,000,000 (in words: Euro one hundred million) in denominations of € 1,000 (the "**Specified Denominations**").
- (2) *Form.* The Notes are in bearer form and represented by one or more global notes (each a "**Global Note**").
- (3) *Temporary Global Note – Exchange.*
- (a) The Notes are initially represented by a temporary Global Note (the "**Temporary Global Note**") without coupons. The Temporary Global Note will be exchangeable for Notes in Specified Denominations represented by a permanent global note (the "**Permanent Global Note**") without coupons. The Temporary Global Note and the Permanent Global Note shall each be signed manually by two authorised signatories of the Issuer and shall each be authenticated by or on behalf of the Fiscal Agent. Definitive Notes and interest coupons will not be issued.
- (b) The Temporary Global Note shall be exchanged for the Permanent Global Note on a date (the "**Exchange Date**") not later than 180 days after the date of issue of the Temporary Global Note. The Exchange Date for such exchange will not be earlier than 40 days after the date of issue of the Temporary Global Note. Such exchange shall only be made upon delivery of certifications to the effect that the beneficial owner or owners of the Notes represented by the Temporary Global Note is not a U. S. person (other than certain financial institutions or certain persons holding Notes through such financial institutions). Payment of interest on Notes represented by a Temporary Global Note will be made only after delivery of such certifications. A separate certification shall be required in respect of each such payment of interest. Any such certification received on or after the 40th day after the date of issue of the Temporary Global Note will be treated as a request to exchange such Temporary Global Note pursuant to subparagraph (b) of this § 1 (3). Any securities delivered in exchange for the Temporary Global Note shall be delivered only outside of the United States (as defined in § 4 (3)).
- (4) *Clearing System.* Each Global Note representing the Notes will be kept in custody by or on behalf of the Clearing System. "**Clearing System**" means the following: Clearstream Banking AG, Frankfurt am Main, ("**CBF**").
- (5) *Holder of Notes.* "**Holder**" means any Holder of a proportionate co-ownership or other beneficial interest or right in the Notes.
- (6) *Conditions Incorporated by Reference.* The provisions set out in Schedule 5 of the Amended and Restated Fiscal Agency Agreement dated 12 February 2010 (the "**Agency Agreement**") between [REDACTED] acting as Fiscal Agent and [REDACTED] Luxembourg S.A. acting as Paying Agent (on display on www.bourse.lu) containing primarily the procedural provisions regarding resolutions of Holders shall be fully incorporated into the Terms and Conditions.

§ 2

STATUS, NEGATIVE PLEDGE GUARANTEE AND NEGATIVE PLEDGE OF THE GUARANTOR

- (1) *Status.* The obligations under the Notes constitute unsecured and unsubordinated obligations of the Issuer ranking *pari passu* among themselves and *pari passu* with all other unsecured and unsubordinated obligations of the Issuer except for any obligations preferred by present or future law.

(2) *Negative Pledge*. So long as any of the Notes remains outstanding, but only up to the time all amounts of principal and interest have been placed at the disposal of the Fiscal Agent, the Issuer undertakes not to grant or permit to subsist any encumbrance over any or all of its present or future Assets, as security for any present or future Capital Market Indebtedness issued or guaranteed by the Issuer or by any other person, without at the same time having the Holders share equally and rateably in such security. Within the meaning of this subparagraph (2), the word "encumbrance" shall not comprise any asset-backed transaction conducted through a special purpose vehicle.

"**Capital Market Indebtedness**" within the meaning of this § 2 means any obligation for the payment of borrowed money which is in the form of, or represented or evidenced by, a certificate of indebtedness or in the form of, or represented by, bonds, notes or other securities which are or are capable of being quoted, listed, dealt in or traded on a stock exchange or other recognised securities market.

"**Assets**" within the meaning of this § 2 (2) shall not include any assets currently or in the future employed by the Issuer in connection with the assignment of claims arising from the ordinary business of the Issuer as security for such assigned claims or for claims arising from the transaction on which such assignment is based.

(3) *Guarantee and Negative Pledge of the Guarantor*. ██████████, or the "**Guarantor**", has given its unconditional and irrevocable guarantee (the "**Guarantee**") for the due and punctual payment of principal of and interest on and any other amounts payable in respect of the Notes.

The Guarantor has further undertaken in a negative pledge (the "**Negative Pledge**"), so long as any of the Notes remains outstanding, but only up to the time all amounts of principal and interest have been placed at the disposal of the Fiscal Agent, that it will (i) neither grant nor permit to subsist any encumbrance over any or all of its present or future Assets, as security for any present or future Capital Market Indebtedness (as defined above) issued or guaranteed by the Guarantor or by any of its Principal Subsidiaries or by any other person, and (ii) to the extent to which it is in a position to do so in the relevant moment in a legally permissible manner, procure that non of its Principal Subsidiaries will grant or permit to subsist any encumbrance over any or all of its future Assets, as security for any present or future Capital Market Indebtedness issued or guaranteed by the Issuer or by any of its Principal Subsidiaries or by any other person, without at the same time having the Holders share equally and rateably in such security other than any encumbrance existing over Assets of a newly acquired company which becomes a Principal Subsidiary. Within the meaning of this subparagraph (3), the word "encumbrance" shall not comprise any asset-backed transaction conducted through a special purpose vehicle.

"**Assets**" within the meaning of this § 2 (3) shall not include any assets currently or in the future employed by the Guarantor or any of its Principal Subsidiaries in connection with the assignment of claims arising from the ordinary business of the Guarantor or any of its Principal Subsidiaries as security for such assigned claims or for claims arising from the transaction on which such assignment is based.

"**Principal Subsidiary**" means any consolidated subsidiary of ██████████ (i) whose net sales as shown by the audited non-consolidated accounts (or, where the consolidated subsidiary in question itself prepares consolidated accounts, whose consolidated net sales as shown by the audited consolidated accounts) of such consolidated subsidiary used for the purposes of the latest audited consolidated accounts of ██████████ to have been made up, are at least 5% of the total net sales of ██████████ and its consolidated subsidiaries as shown by such audited consolidated accounts or (ii) whose total Assets as shown by the audited non-consolidated accounts (or, where the consolidated subsidiary in question itself prepares consolidated accounts, whose consolidated total Assets as shown by the audited consolidated accounts) of such consolidated subsidiary used for the purposes of the latest audited consolidated accounts to have been made up, are at least 5% of the total Assets of the ██████████ and its consolidated subsidiaries as shown by audited consolidated accounts. A report by the ██████████'s auditors that in their opinion a consolidated subsidiary is or is not or was or was not at a specified date a Principal Subsidiary shall, in the absence of manifest error, be conclusive and binding on all parties.

The Guarantee and Negative Pledge constitute a contract for the benefit of Holders from time to time as third party beneficiaries in accordance with § 328(1) BGB (German Civil Code)⁽¹⁾, giving rise to the right of each Holder to require performance of the Guarantee and the Negative Pledge directly from the Guarantor and to enforce the Guarantor and the Negative Pledge directly against the Guarantor.

⁽¹⁾ In English language translation § 328(1) BGB (German Civil Code) reads as follows:

"A contract may stipulate performance for the benefit of a third party, to the effect that the third party acquires the right directly to demand performance."

Copies of the Guarantee and Negative Pledge may be obtained free of charge at the specified offices of each of the Paying Agents.

§ 3 INTEREST

(1) *Rate of Interest and Interest Payment Dates.* The Notes shall bear interest on their principal amount at the rate of 4.00% *per annum* from (and including) [REDACTED] 2010 to (but excluding) the Maturity Date (as defined in § 5 (1)). Interest shall be payable in arrears on [REDACTED] in each year (each such date, an "**Interest Payment Date**"). The first payment of interest shall be made on [REDACTED] 2011 and will amount to € 20.38 for a Note in a denomination of € 1,000.

(2) *Accrual of Interest.* The Notes shall cease to bear interest from the expiry of the day preceding the day on which they are due for redemption. If the Issuer shall fail to redeem the Notes when due, interest shall continue to accrue on the outstanding principal amount of the Notes beyond the due date until the expiry of the day preceding the day of the actual redemption of the Notes at the default rate of interest established by law⁽²⁾.

(3) *Calculation of Interest for Partial Periods.* If interest is required to be calculated for a period of less than a full year, such interest shall be calculated on the basis of the Day Count Fraction (as defined below).

(4) *Day Count Fraction.* "**Day Count Fraction**" means, in respect of the calculation of an amount of interest on any Note for any period of time (the Calculation Period): the actual number of days in the Calculation Period divided by the actual number of days in the respective interest year.

§ 4 PAYMENTS

(1) (a) *Payment of Principal.* Payment of principal in respect of Notes shall be made, subject to subparagraph (2) below, to the Clearing System or to its order for credit to the accounts of the relevant account holders of the Clearing System upon presentation and (except in the case of partial payment) surrender of the Global Note representing the Notes at the time of payment at the specified office of the Fiscal Agent outside the United States.

(b) *Payment of Interest.* Payment of interest on Notes shall be made, subject to subparagraph (2), to the Clearing System or to its order for credit to the relevant account holders of the Clearing System.

Payment of interest on Notes represented by the Temporary Global Note shall be made, subject to subparagraph (2), to the Clearing System or to its order for credit to the relevant account holders of the Clearing System, upon due certification as provided in § 1 (3) (b).

(2) *Manner of Payment.* Subject to applicable fiscal and other laws and regulations, payments of amounts due in respect of the Notes shall be made in the freely negotiable and convertible currency which on the respective due date is the currency of the country of the Specified Currency.

(3) *United States.* For purposes of § 1 (3) and subparagraph (1) of this § 4, "**United States**" means the United States of America (including the States thereof and the District of Columbia) and its possessions (including Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and Northern Mariana Islands).

(4) *Discharge.* The Issuer or, as the case may be, the Guarantor shall be discharged by payment to, or to the order of, the Clearing System.

(5) *Payment Business Day.* If the date for payment of any amount in respect of any Note is not a Payment Business Day then the Holder shall not be entitled to payment until the next such day in the relevant place and shall not be entitled to further interest or other payment in respect of such delay. For these purposes, "**Payment Business Day**" means any day which is a day (other than a Saturday or a Sunday) on which the Clearing System as well as all relevant parts of the Trans-European Automated Real-time Gross Settlement Express Transfer System 2 ("**TARGET**") are operational to forward the relevant payment.

(6) *References to Principal and Interest.* Reference in these Conditions to principal in respect of the Notes shall be deemed to include, as applicable, the Final Redemption Amount of the Notes; the Early Redemption Amount of the Notes; and any premium and any other amounts which may be payable under

⁽²⁾ The default rate of interest established by law is five percentage points above the basic rate of interest published by *Deutsche Bundesbank* from time to time, §§ 288(1), 247 BGB (German Civil Code).

or in respect of the Notes. Reference in these Conditions to interest in respect of the Notes shall be deemed to include, as applicable, any Additional Amounts which may be payable under § 7.

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

§ 5 REDEMPTION

(1) *Redemption at Maturity.* Unless previously redeemed in whole or in part or purchased and cancelled, the Notes shall be redeemed at their Final Redemption Amount on [REDACTED] 2014 (the "**Maturity Date**"). The Final Redemption Amount in respect of each Note shall be its principal amount.

(2) *Early Redemption for Reasons of Taxation.* If as a result of any change in, or amendment to, the laws or regulations of the Republic of Ireland or the Federal Republic of Germany or any political subdivision or taxing authority thereto or therein affecting taxation or the obligation to pay duties of any kind, or any change in, or amendment to, an official interpretation or application of such laws or regulations, which amendment or change is effective on or after the date on which the last tranche of this series of Notes was issued, the Issuer is required to pay Additional Amounts (as defined in § 7 herein) on the next succeeding Interest Payment Date (as defined in § 3 (1)), and this obligation cannot be avoided by the use of reasonable measures available to the Issuer, the Notes may be redeemed, in whole but not in part, at the option of the Issuer, upon not more than 60 days' nor less than 30 days' prior notice of redemption given to the Fiscal Agent and, in accordance with § 14 to the Holders, at their Early Redemption Amount (as defined below), together with interest (if any) accrued to the date fixed for redemption.

However, no such notice of redemption may be given (i) earlier than 90 days prior to the earliest date on which the Issuer would be obligated to pay such Additional Amounts when a payment in respect of the Notes are then due, or (ii) if at the time such notice is given, such obligation to pay such Additional Amounts or make such deduction or withholding does not remain in effect.

Any such notice shall be given in accordance with § 14. It shall be irrevocable, must specify the date fixed for redemption and must set forth a statement in summary form of the facts constituting the basis for the right of the Issuer so to redeem.

(3) *Change of Control.* If there occurs a Change of Control and within the Change of Control Period a Rating Downgrade in respect of that Change of Control occurs (together called a "**Put Event**"), each Holder will have the option (unless, prior to the giving of the Put Event Notice referred to below, the Issuer gives notice to redeem the Notes in accordance with § 5(2)) to require the Issuer to redeem that Note on the Optional Redemption Date at its principal amount together with interest accrued to but excluding the Optional Redemption Date.

For the purposes of such option:

"**Rating Agency**" means Standard and Poor's Rating Services, a division of The McGraw-Hill Companies, Inc. ("**S&P**") or any successor or any other rating agency of equivalent international standing specified from time to time by the Guarantor;

A "**Rating Downgrade**" shall be deemed to have occurred in respect of a Change of Control (a) if within the Change of Control Period any rating previously assigned to the Notes by any Rating Agency is (i) withdrawn or (ii) changed from an investment grade rating (BBB by S&P or its equivalent for the time being, or better) to a non-investment grade rating (BB+ by S&P or its equivalent for the time being, or worse) or (iii) (if the rating assigned to the Notes by any Rating Agency shall be below an investment grade rating) lowered one full rating notch (from BB+ to BB by S&P or such similar lower of equivalent rating) or (b) if at the time of the Change of Control, there is no rating assigned to the Notes and no Rating Agency assigns during the Change of Control Period an investment grade credit rating to the Notes (unless the Guarantor is unable to obtain such a rating within such period having used all reasonable endeavours to do so and such failure is unconnected with the occurrence of the Change of Control);

A "**Change of Control**" shall be deemed to have occurred at each time (whether or not approved by the Management Board or Supervisory Board of [REDACTED]) that any person or persons (other than [REDACTED] and/or his legal heir(s) (*gesetzliche Erben*)) ("**Relevant Person(s)**") acting in concert

or any person or persons acting on behalf of any such Relevant Person(s), at any time directly or indirectly acquire(s) or come(s) to own (i) more than 50% of the issued ordinary share capital of [REDACTED] or (ii) such number of the shares in the capital of [REDACTED] carrying more than 50% of the voting rights normally exercisable at the general meeting of the shareholders of [REDACTED];

"**Change of Control Period**" means the period ending 120 days after the occurrence of the Change of Control; and

The "**Optional Redemption Date**" is the seventh day after the last day of the Put Period.

Promptly upon the Issuer becoming aware that a Put Event has occurred, the Issuer shall give notice (a "**Put Event Notice**") to the Holders in accordance with § 14 specifying the nature of the Put Event and the circumstances giving rise to it and the procedure for exercising the option set out in this § 5 (3).

In order to exercise such option, the Holder must submit during normal business hours at the specified office of the Fiscal Agent a duly completed option exercise notice ("**Exercise Notice**") in the form available from the specified office of the Fiscal Agent within the period (the "**Put Period**") of 45 days after a Put Event Notice is given. No option so exercised may be revoked or withdrawn without the prior consent of the Issuer.

(4) *Early Redemption Amount.* For purposes of subparagraph (2) of this § 5 and § 9, the Early Redemption Amount of a Note shall be its Final Redemption Amount.

§ 6 AGENTS

(1) *Appointment; Specified Offices.* The initial Fiscal Agent and Paying Agent and their respective initial specified offices are:

Fiscal Agent and Paying Agent:

[REDACTED]
[REDACTED]
[REDACTED]
Federal Republic of Germany

Paying Agent:

[REDACTED]
[REDACTED]
Luxembourg

The Fiscal Agent and the Paying Agent reserve the right at any time to change their respective specified offices to some other specified office in the same city.

(2) *Variation or Termination of Appointment; required Paying Agents.* The Issuer reserves the right at any time to vary or terminate the appointment of the Fiscal Agent or any Paying Agent and to appoint another Fiscal Agent or additional or other Paying Agents. The Issuer shall at all times maintain (i) a Fiscal Agent and (ii) so long as the Notes are listed on any stock exchange and the rules of such stock exchange so require, a Paying Agent (which may be the Fiscal Agent) with a specified office in such place as required by the rules of such stock exchange. 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 Holders in accordance with § 14.

(3) *Agents of the Issuer.* The Fiscal Agent and the Paying Agent act solely as agents of the Issuer and do not have any obligations towards or relationship of agency or trust to any Holder.

§ 7 TAXATION

Principal and interest shall be payable by the Issuer without deduction or withholding for or on account of any present or future taxes, duties or governmental charges of any nature whatsoever imposed, levied or collected by or in or on behalf of the Republic of Ireland or the Federal Republic of Germany or by or on behalf of any political subdivision or authority therein having power to tax (hereinafter together called "**Withholding Taxes**"), unless such deduction or withholding is required by law. In such event, the Issuer shall pay such additional amounts of principal and interest as may be necessary in order that the net amounts received by the Holder after such deduction or withholding shall equal the respective amounts of

principal and interest which would have been receivable had no such deduction or withholding been required. No such additional amounts shall, however, be payable on account of any taxes, duties or governmental charges which

- (a) are payable by any person acting as custodian bank or collecting agent on behalf of a Holder, or otherwise in any manner which does not constitute a deduction or withholding by the Issuer from payments of principal or interest made by it; or
- (b) are payable by reason of the Holder having, or having had, some personal or business connection with the Republic of Ireland or the Federal Republic of Germany and not merely by reason of the fact that payments in respect of the Notes are, or for purposes of taxation are deemed to be, derived from sources in, or are secured in the Republic of Ireland or the Federal Republic of Germany; or
- (c) are deducted or withheld pursuant to (i) any European Union directive or regulation concerning the taxation of interest income, or (ii) any international treaty or understanding relating to such taxation and to which the Federal Republic of Germany, the Republic of Ireland or the European Union is a party, or (iii) any provision of law implementing, or complying with, or introduced to conform with, such directive, regulation, treaty or understanding; or
- (d) are payable by reason of a change in a law that becomes effective more than 30 days after the relevant payment of principal or interest becomes due, or is duly provided for and notice thereof is published in accordance with § 14, whichever occurs later.

§ 8 PRESENTATION PERIOD

The presentation period provided in § 801 subparagraph 1, sentence 1 BGB (German Civil Code) is reduced to ten years for the Notes.

§ 9 EVENTS OF DEFAULT

(1) *Events of Default.* Each Holder shall be entitled to declare his Notes due and demand immediate redemption thereof at the Early Redemption Amount (as described in § 5 (4)) together with accrued interest (if any) to the date of repayment, in the event that any of the following events (each, an "**Event of Default**") occurs:

- (a) the Issuer fails to pay principal or interest within 30 days from the relevant due date, or
- (b) the Issuer fails duly to perform any other obligation arising from the Notes or the Guarantor fails to perform any obligation arising from the Guarantee referred to in § 2 which failure is not capable of remedy or, if such failure is capable of remedy, such failure continues for more than 60 days after the Fiscal Agent has received notice thereof from a Holder, or
- (c) any Capital Market Indebtedness (as defined in § 2 (1)) of the Issuer or the Guarantor or any of its Principal Subsidiaries becomes prematurely repayable as a result of a default in respect of the terms thereof, or the Issuer the Guarantor or any of its Principal Subsidiaries fails to fulfil any payment obligation in excess of € 10,000,000 or the equivalent thereof under any Capital Market Indebtedness or under any guarantee or suretyship given for any Capital Market Indebtedness of others within 30 days from its due date or, in the case of a guarantee or suretyship, within 30 days after the guarantee or suretyship has been invoked, unless the Issuer, or the Guarantor or the relevant Principal Subsidiary shall contest in good faith that such payment obligation exists or is due or that such guarantee or suretyship has been validly invoked, or if a security granted therefor is enforced on behalf of or by the creditor(s) entitled thereto, or
- (d) the Issuer or the Guarantor or any of its Principal Subsidiaries announces its inability to meet its financial obligations or ceases its payments, or
- (e) the Issuer or the Guarantor or any of the Principal Subsidiaries of the Guarantor applies for, or a court opens against any of them, bankruptcy, insolvency, liquidation, examinership or similar proceedings or the Issuer or the Guarantor or any of the Principal Subsidiaries of the Guarantor offers or makes an arrangement for the benefit of its creditors generally or a liquidator, examiner, conservator or similar officer is appointed or a third party applies for bankruptcy, insolvency, liquidation, examinership or

similar proceedings against the Issuer or the Guarantor or any of the Principal Subsidiaries of the Guarantor and such proceedings are not dismissed within 30 days, or

- (f) the Issuer or the Guarantor or any of its Principal Subsidiaries goes into liquidation unless this is done in connection with a merger, or other form of combination with another company and such company assumes all obligations contracted by the Issuer or the Guarantor or any of its Principal Subsidiaries, as the case may be, in connection with this issue, or
- (g) any governmental order, decree or enactment shall be made in or by the Republic of Ireland or the Federal Republic of Germany whereby the Issuer or the Guarantor is prevented from performing in full its obligations as set forth in these Conditions and in the Guarantee, respectively, and this situation is not cured within 90 days, or
- (h) the Guarantee ceases to be valid and legally binding for any reason whatsoever.

The right to declare Notes due shall terminate if the situation giving rise to it has been cured before the right is exercised.

(2) *Quorum.* In the events specified in § 9 (1) (b) or subparagraph (1) (c), any notice declaring Notes due shall, unless at the time such notice is received any of the events specified in § 9 (1) (a), (1) (d), (1) (e), (1) (f), (1) (g) or (1) (h) entitling Holders to declare their Notes due has occurred, become effective only when the Fiscal Agent has received such notices from the Holders of at least one-tenth in principal amount of Notes then outstanding.

(3) *Form of Notice.* Any notice, including any notice declaring Notes due, in accordance with subparagraph (1) shall be made by means of a written declaration delivered by hand or registered mail to the specified office of the Fiscal Agent.

§ 10 SUBSTITUTION

(1) *Substitution.* The Issuer may, without the consent of the Holders, if no payment of principal or interest on any of the Notes is in default, at any time substitute for the Issuer either the Guarantor or any Subsidiary (as defined below) of the Guarantor as principal debtor in respect of all obligations arising from or in connection with the Notes (the "**Substitute Debtor**") provided that:

- (a) the Substitute Debtor assumes all obligations of the Issuer in respect of the Notes;
- (b) the Issuer and the Substitute Debtor have obtained all necessary authorisations and may transfer to the Fiscal Agent in the Specified Currency and without being obligated to deduct or withhold any taxes or other duties of whatever nature levied by the country in which the Substitute Debtor or the Issuer has its domicile or tax residence, all amounts required for the fulfilment of the payment obligations arising under the Notes;
- (c) the Substitute Debtor has agreed to indemnify and hold harmless each Holder against any tax, duty, assessment or governmental charge imposed on such Holder in respect of such substitution;
- (d) the Guarantor if it is not itself the Substitute Debtor irrevocably and unconditionally guarantees in favour of each Holder the payment of all sums payable by the Substitute Debtor in respect of the Notes on terms equivalent to the terms of the Guarantee;
- (e) there shall have been delivered to the Fiscal Agent an opinion or opinions of lawyers of recognised standing to the effect that subparagraphs (a), (b), (c) and (d) above have been satisfied.

For the purposes of this § 10 "**Subsidiary**" shall mean any corporation in which [REDACTED] directly or indirectly in the aggregate holds not less than 90% of the capital of any class or of the voting rights.

(2) *Notice.* Notice of any such substitution shall be published in accordance with § 14.

(3) *Change of References.* In the event of any such substitution, any reference in these Conditions to the Issuer shall from then on be deemed to refer to the Substitute Debtor and any reference to the country in which the Issuer is domiciled or resident for taxation purposes shall from then on be deemed to refer to the country of domicile or residence for taxation purposes of the Substitute Debtor. Furthermore, in the event of such substitution the following shall apply:

In § 7 and § 5 (2) an alternative reference to the Republic of Ireland shall be deemed to have been included in addition to the reference according to the preceding sentence to the country of domicile or residence for taxation purposes of the Substitute Debtor.

§ 11

AMENDMENT OF THE TERMS AND CONDITIONS, HOLDERS' REPRESENTATIVE

(1) *Amendment of the Terms and Conditions.* In accordance with the Act on Debt Securities of 2009 (*Schuldverschreibungsgesetz aus Gesamtemissionen – SchVG*) the Holders may agree with the Issuer on amendments of the Terms and Conditions with regard to matters permitted by the SchVG by resolution with the majority specified in subparagraph (2). Majority resolutions shall be binding on all Holders. Resolutions which do not provide for identical conditions for all Holders are void, unless Holders who are disadvantaged have expressly consented to their being treated disadvantageously.

(2) *Majority.* Resolutions shall be passed by a majority of not less than 75% of the votes cast. Resolutions relating to amendments of the Terms and Conditions which are not material and which do not relate to the matters listed in § 5 (3) No. 1 – 8 of the SchVG require a simple majority of the votes cast.

(3) *Vote without a meeting.* All votes will be taken exclusively by vote taken without a meeting. A meeting of Holders and the assumption of the fees by the Issuer for such a meeting will only take place in the circumstances of § 18 (4) sentence 2 of the SchVG.

(4) *Chair of the vote.* The vote will be chaired by a notary appointed by the Issuer or, if the Holders' Representative (as defined below) has convened the vote, by the Holders' Representative.

(5) *Voting rights.* Each Holder participating in any vote shall cast votes in accordance with the nominal amount or the notional share of its entitlement to the outstanding Notes.

(6) *Holders' Representative.* The Holders may by majority resolution appoint a common representative (the "**Holders' Representative**") to exercise the Holders' rights on behalf of each Holder.

The Holders' Representative shall have the duties and powers provided by law or granted by majority resolution of the Holders. The Holders' Representative shall comply with the instructions of the Holders. To the extent that the Holders' Representative has been authorised to assert certain rights of the Holders, the Holders shall not be entitled to assert such rights themselves, unless explicitly provided for in the relevant majority resolution. The Holders' Representative shall provide reports to the Holders on its activities. The regulations of the SchVG apply with regard to the recall and the other rights and obligations of the Holders' Representative.

§ 12

GUARANTEE

The provisions of § 11 applicable to the Notes shall apply *mutatis mutandis* to the Guarantee of [REDACTED].

§ 13

FURTHER ISSUES, PURCHASES AND CANCELLATION

(1) *Further Issues.* The Issuer may from time to time, without the consent of the Holders, issue further Notes having the same conditions as the Notes in all respects (or in all respects except for the issue date, interest commencement date and/or issue price) so as to form a single Series with the Notes.

(2) *Purchases.* The Issuer may at any time purchase Notes in the open market or otherwise and at any price. Notes purchased by the Issuer may, at the option of the Issuer, be held, resold or surrendered to the Fiscal Agent for cancellation. If purchases are made by tender, tenders for such Notes must be made available to all Holders of such Notes alike.

(3) *Cancellation.* All Notes redeemed in full shall be cancelled forthwith and may not be reissued or resold.

§ 14

NOTICES

(1) *Notification to Clearing System.* The Issuer shall deliver all notices concerning the Notes to the Clearing System for communication by the Clearing System to the Holders, provided that the rules of the stock exchange on which the Notes are listed permit such form of notice. Any such notice shall be deemed to have been given to the Holders on the seventh calendar day after the day on which the said notice was given to the Clearing System.

(2) *Publication.* All notices concerning the Notes shall be published in a leading daily newspaper having general circulation in the Federal Republic of Germany. This newspaper is expected to be the electronic Federal Gazette (*elektronischer Bundesanzeiger*). Any notice so given will be deemed to have been validly given on the third calendar day following the date of such publication (or, if published more than once, on the third calendar day following the date of the first such publication).

(3) *Electronic Publication.* All notices concerning the Notes shall be published on the webpage of the Luxembourg Stock Exchange (www.bourse.lu). Any notice so given will be deemed to have been validly given on the third calendar day following the date of such publication (or, if published more than once, on the third calendar day following the date of the first such publication).

§ 15

APPLICABLE LAW, PLACE OF JURISDICTION, PROCESS AGENT AND ENFORCEMENT

(1) *Applicable Law.* The Notes, as to form and content, and all rights and obligations of the Holders and the Issuer, shall be governed by German law.

(2) *Submission to Jurisdiction.* The District Court (*Landgericht*) in Frankfurt am Main shall have nonexclusive jurisdiction for any action or other legal proceedings ("**Proceedings**") arising out of or in connection with the Notes.

(3) *Appointment of Authorised Agent.* For any Proceedings before German courts, the Issuer has appointed [REDACTED], Federal Republic of Germany, as its authorised agent for service of process in the Federal Republic of Germany.

(4) *Enforcement.* Any Holder of Notes may in any Proceedings against the Issuer, or to which such Holder and the Issuer are parties, protect and enforce in his own name his rights arising under such Notes on the basis of (i) a statement issued by the Custodian (as defined below) with whom such Holder maintains a securities account in respect of the Notes (a) stating the full name and address of the Holder, (b) specifying the aggregate principal amount of Notes credited to such securities account on the date of such statement and (c) confirming that the Custodian has given written notice to the Clearing System containing the information pursuant to (a) and (b) and (ii) a copy of the Note in global form certified as being a true copy by a duly authorised officer of the Clearing System or a depository of the Clearing System, without the need for production in such proceedings of the actual records or the global note representing the Notes. For purposes of the foregoing, "**Custodian**" means any bank or other financial institution of recognised standing authorised to engage in securities custody business with which the Holder maintains a securities account in respect of the Notes and includes the Clearing System. Each Holder may, without prejudice to the foregoing, protect and enforce his rights under these Notes also in any other way which is admitted in the country of the Proceedings.

§ 16

LANGUAGE

These Conditions are written in the German language and provided with an English language translation. The German text shall be controlling and binding. The English language translation is provided for convenience only.

Diese Serie von Schuldverschreibungen wird gemäß einem geänderten und neugefassten Fiscal Agency Agreement (der Emissions- und Zahlstellenvertrag) vom [REDACTED] 2010 (das "**Agency Agreement**") zwischen [REDACTED] ("") und [REDACTED] plc") (jeweils eine "**Emittentin**" und zusammen die "Emittentinnen") und [REDACTED] als Emissionsstelle (die "**Emissionsstelle**", wobei dieser Begriff jeden Nachfolger der Emissionsstelle gemäß dem Agency Agreement einschließt) und den anderen darin genannten Parteien begeben. Ablichtungen des Agency Agreement können kostenlos bei der bezeichneten Geschäftsstelle der Emissionsstelle und bei den bezeichneten Geschäftsstellen (siehe § 6(1) der Anleihebedingungen) einer jeden Zahlstelle sowie bei den Hauptgeschäftsstellen einer jeden Emittentin bezogen werden.

ANLEIHEBEDINGUNGEN (DEUTSCHE FASSUNG)

§ 1

WÄHRUNG, STÜCKELUNG, FORM, DEFINITIONEN

(1) *Währung; Stückelung.* Diese Serie der Schuldverschreibungen (die "**Schuldverschreibungen**") der [REDACTED] Finance PLC (die "**Emittentin**") wird in Euro ("€") (die "**festgelegte Währung**") im Gesamtnennbetrag von € 100.000.000 (in Worten: Euro einhundert Millionen) in Stückelungen von € 1.000 (die "**festgelegten Stückelungen**") begeben.

(2) *Form.* Die Schuldverschreibungen lauten auf den Inhaber und sind durch eine oder mehrere Globalurkunden verbrieft (jede eine "**Globalurkunde**").

(3) *Vorläufige Globalurkunde-Austausch.*

(a) Die Schuldverschreibungen sind anfänglich durch eine vorläufige Globalurkunde (die "**vorläufige Globalurkunde**") ohne Zinsscheine verbrieft. Die vorläufige Globalurkunde wird gegen Schuldverschreibungen in den festgelegten Stückelungen, die durch eine Dauerglobalurkunde (die "**Dauerglobalurkunde**") ohne Zinsscheine verbrieft sind, ausgetauscht. Die vorläufige Globalurkunde und die Dauerglobalurkunde tragen jeweils die eigenhändigen Unterschriften zweier ordnungsgemäß bevollmächtigter Vertreter der Emittentin und sind jeweils von der Emissionsstelle oder in deren Namen mit einer Kontrollunterschrift versehen. Einzelurkunden und Zinsscheine werden nicht ausgegeben.

(b) Die vorläufige Globalurkunde wird an einem Tag (der "**Austauschtag**") gegen die Dauerglobalurkunde ausgetauscht, der nicht mehr als 180 Tage nach dem Tag der Ausgabe der vorläufigen Globalurkunde liegt. Der Austauschtag für einen solchen Austausch soll nicht weniger als 40 Tage nach dem Tag der Ausgabe der vorläufigen Globalurkunde liegen. Ein solcher Austausch soll nur nach Vorlage von Bescheinigungen erfolgen, wonach der oder die wirtschaftlichen Eigentümer der durch die vorläufige Globalurkunde verbrieften Schuldverschreibungen keine U. S.-Personen sind (ausgenommen bestimmte Finanzinstitute oder bestimmte Personen, die Schuldverschreibungen über solche Finanzinstitute halten). Zinszahlungen auf durch eine vorläufige Globalurkunde verbrieft Schuldverschreibungen erfolgen erst nach Vorlage solcher Bescheinigungen. Eine gesonderte Bescheinigung ist hinsichtlich einer jeden solchen Zinszahlung erforderlich. Jede Bescheinigung, die am oder nach dem 40. Tag nach dem Tag der Ausgabe der vorläufigen Globalurkunde eingeht, wird als ein Ersuchen behandelt werden, diese vorläufige Globalurkunde gemäß Absatz (b) dieses § 1(3) auszutauschen. Wertpapiere, die im Austausch für die vorläufige Globalurkunde geliefert werden, sind nur außerhalb der Vereinigten Staaten (wie in § 4(3) definiert) zu liefern.

(4) *Clearing System.* Jede Schuldverschreibungen verbrieftende Globalurkunde wird von einem oder im Namen eines Clearing Systems verwahrt. "**Clearing System**" bedeutet folgendes: Clearstream Banking AG, Frankfurt am Main, ("**CBF**").

(5) *Gläubiger von Schuldverschreibungen.* "**Gläubiger**" bedeutet jeder Inhaber eines Miteigentumsanteils oder anderen Rechts an den Schuldverschreibungen.

(6) *Einbezogene Bedingungen.* Die Bestimmungen gemäß Schedule 5 des neugefassten Emissions- und Zahlstellenvertrages vom 12. Februar 2010 (das "**Agency Agreement**") zwischen [REDACTED] als Emissions- und Zahlstelle und [REDACTED] S.A. als Zahlstelle (einsehbar unter www.bourse.lu), die überwiegend das für Gläubigerversammlungen oder Abstimmungen der Gläubiger ohne Versammlung zu wählende Verfahren betreffend, sind in vollem Umfang in diese Anleihebedingungen einbezogen.

§ 2

STATUS, NEGATIVVERPFLICHTUNG, GARANTIE UND NEGATIVVERPFLICHTUNG DER GARANTIN

(1) *Status*. Die Schuldverschreibungen begründen nicht besicherte und nicht nachrangige Verbindlichkeiten der Emittentin, die untereinander und mit allen anderen nicht besicherten und nicht nachrangigen Verbindlichkeiten der Emittentin gleichrangig sind mit Ausnahme von Verbindlichkeiten, die nach gegenwärtig oder zukünftig geltenden Rechtsvorschriften vorrangig sind bzw. sein werden.

(2) *Negativverpflichtung*. Die Emittentin verpflichtet sich, solange Schuldverschreibungen ausstehen, jedoch nur bis zu dem Zeitpunkt, an dem alle Beträge an Kapital und Zinsen der Hauptzahlstelle zur Verfügung gestellt worden sind, weder ihr gegenwärtiges noch ihr zukünftiges Vermögen ganz oder teilweise in irgendeiner Weise zur Besicherung einer gegenwärtigen oder zukünftigen Kapitalmarktverbindlichkeit, die von der Emittentin oder einer anderen Person eingegangen oder gewährleistet ist, zu belasten oder eine solche Belastung zu diesem Zweck bestehen lassen, ohne gleichzeitig die Gläubiger an derselben Sicherheit im gleichen Rang und gleichen Verhältnis teilnehmen zu lassen. Ausgenommen von diesem § 2(2) sind Belastungen im Rahmen von asset-backed Finanzierungen, die unter Einbeziehung einer Zweckgesellschaft durchgeführt werden.

"Kapitalmarktverbindlichkeit" im Sinne dieses § 2 ist jede Verbindlichkeit zur Zahlung aufgenommener Gelder, die durch Schuldscheine oder durch Schuldverschreibungen oder sonstige Wertpapiere, die an einer Börse oder an einem anderen anerkannten Wertpapiermarkt notiert oder gehandelt werden oder werden können, verbrieft, verkörpert oder dokumentiert ist.

"Vermögen" im Sinne dieses § 2 (2) sind nicht solche Vermögensgegenstände, die von der Emittentin jetzt oder zukünftig im Zusammenhang mit der Abtretung von im gewöhnlichen Geschäftsbetrieb der Emittentin entstandenen Forderungen zur Besicherung der abgetretenen Forderungen oder von Ansprüchen aus dem der Abtretung der Forderungen zugrundeliegenden Rechtsgeschäft eingesetzt werden.

(3) *Garantie und Negativverpflichtung der Garantin*. [REDACTED], oder die **"Garantin"**, hat die unbedingte und unwiderrufliche Garantie (die **"Garantie"**) für die ordnungsgemäße und pünktliche Zahlung von Kapital und Zinsen und sonstiger auf die Schuldverschreibungen zahlbare Beträge übernommen.

Die Garantin hat sich außerdem in einer Negativverpflichtung (die **"Negativverpflichtung"**) verpflichtet, solange Schuldverschreibungen ausstehen, jedoch nur bis zu dem Zeitpunkt, an dem alle Beträge an Kapital und Zinsen der Hauptzahlstelle zur Verfügung gestellt worden sind, (i) weder ihr gegenwärtiges noch ihr zukünftiges Vermögen ganz oder teilweise in irgendeiner Weise zur Besicherung einer gegenwärtigen oder zukünftigen Kapitalmarktverbindlichkeit (wie vorstehend definiert), die von der Garantin, einer ihrer wesentlichen Tochtergesellschaften oder einer anderen Person eingegangen oder gewährleistet ist, zu belasten oder eine solche Belastung zu diesem Zweck bestehen zu lassen, und (ii) soweit sie dazu im maßgeblichen Zeitpunkt in rechtlich zulässiger Weise in der Lage ist, ihre wesentlichen Tochtergesellschaften zu veranlassen, weder ihr gegenwärtiges noch ihr zukünftiges Vermögen ganz oder teilweise in irgendeiner Weise zur Besicherung einer gegenwärtigen oder zukünftigen Kapitalmarktverbindlichkeit, die von der Emittentin, einer ihrer wesentlichen Tochtergesellschaften oder einer anderen Person eingegangen oder gewährleistet ist, zu belasten oder eine solche Belastung zu diesem Zweck bestehen zu lassen, ohne gleichzeitig die Gläubiger an derselben Sicherheit im gleichen Rang und gleichen Verhältnis teilnehmen zu lassen, mit Ausnahme von bestehenden Besicherungen am Vermögen einer Gesellschaft, die im Rahmen einer Akquisition wesentliche Tochtergesellschaft wird. Ausgenommen von diesem § 2(3) sind Belastungen im Rahmen von asset-backed Finanzierungen, die unter Einbeziehung einer Zweckgesellschaft durchgeführt werden.

"Vermögen" im Sinne dieses § 2 (3) sind nicht solche Vermögensgegenstände, die von der Garantin oder einer ihrer wesentlichen Tochtergesellschaften jetzt oder zukünftig im Zusammenhang mit der Abtretung von im gewöhnlichen Geschäftsbetrieb der Garantin oder einer ihrer wesentlichen Tochtergesellschaften entstandenen Forderungen zur Besicherung der abgetretenen Forderungen oder von Ansprüchen aus dem der Abtretung der Forderungen zugrundeliegenden Rechtsgeschäft eingesetzt werden.

"Wesentliche Tochtergesellschaft" bezeichnet eine konsolidierte Tochtergesellschaft der [REDACTED], (i) deren Nettoumsatz gemäß ihres geprüften, nicht konsolidierten Jahresabschlusses (bzw. wenn die betreffende Tochtergesellschaft selbst konsolidierte Jahresabschlüsse erstellt, deren konsolidierter Umsatz gemäß ihres geprüften, konsolidierten Jahresabschlusses), der für die Zwecke des letzten geprüften konsolidierten Konzernabschlusses der [REDACTED] benutzt wurde, mindestens 5% des Gesamtumsatzes der [REDACTED] und deren konsolidierten Konzerntochtergesellschaften betragen hat, wie aus dem geprüften, konsolidierten Konzernabschluss ersichtlich oder (ii) deren Bilanzsumme gemäß ihrem

geprüften, nicht konsolidierten Jahresabschluss (oder wenn die betreffende Konzerntochtergesellschaft selbst konsolidierte Abschlüsse erstellt, deren konsolidierte Bilanzsumme gemäß ihrem konsolidierten, geprüften Jahresabschluss), der für die Zwecke des letzten geprüften, konsolidierten Abschlusses benutzt werde, mindestens 5% der konsolidierten Bilanzsumme der [REDACTED] und ihrer konsolidierten Tochtergesellschaft betragen hat, wie aus dem geprüften konsolidierten Abschluss ersichtlich. Ein Bericht der Wirtschaftsprüfer der [REDACTED] darüber, ob ihrer Meinung nach eine konsolidierte Tochtergesellschaft zu einem bestimmten Zeitpunkt eine wesentliche Tochtergesellschaft ist oder war, ist, sofern nicht ein offensichtlicher Irrtum vorliegt, für alle Beteiligten endgültig und bindend.

Die Garantie und die Negativverpflichtung stellen einen Vertrag zugunsten jedes Gläubigers als begünstigtem Dritten gemäß § 328 BGB dar, welcher das Recht jedes Gläubigers begründet, Erfüllung aus der Garantie und der Negativverpflichtung unmittelbar von der Garantin zu verlangen und die Garantie und die Negativverpflichtung unmittelbar gegen die Garantin durchzusetzen.

Kopien der Garantie und Negativverpflichtung werden bei den bei den bezeichneten Geschäftsstellen der Zahlstellen zur kostenlosen Ausgabe bereitgehalten.

§ 3 ZINSEN

(1) *Zinssatz und Zinszahlungstage.* Die Schuldverschreibungen werden bezogen auf ihren Nennbetrag verzinst, und zwar vom [REDACTED] 2010 (einschließlich) bis zum Fälligkeitstag (wie in § 5(1) definiert) (ausschließlich) mit jährlich 4,00%. Die Zinsen sind nachträglich am [REDACTED] eines jeden Jahres zahlbar (jeweils ein "**Zinszahlungstag**"). Die erste Zinszahlung erfolgt am [REDACTED] 2011 und beläuft sich auf € 20,38 je Schuldverschreibung im Nennbetrag von € 1.000.

(2) *Auflaufende Zinsen.* Der Zinslauf der Schuldverschreibungen endet mit Ablauf des Tages, der dem Tag vorangeht, an dem sie zur Rückzahlung fällig werden. Falls die Emittentin die Schuldverschreibungen bei Fälligkeit nicht einlöst, erfolgt die Verzinsung des ausstehenden Nennbetrages der Schuldverschreibungen vom Tag der Fälligkeit bis zum Tag der tatsächlichen Rückzahlung der Schuldverschreibungen in Höhe des gesetzlich festgelegten Satzes für Verzugszinsen⁽³⁾.

(3) *Berechnung der Zinsen für Teile von Zeiträumen.* Sofern Zinsen für einen Zeitraum von weniger als einem Jahr zu berechnen sind, erfolgt die Berechnung auf der Grundlage des Zinstagequotienten (wie nachstehend definiert).

(4) *Zinstagequotient.* "**Zinstagequotient**" bezeichnet im Hinblick auf die Berechnung eines Zinsbetrages auf eine Schuldverschreibung für einen beliebigen Zeitraum (der "**Zinsberechnungszeitraum**"): die tatsächliche Anzahl von Tagen im Zinsberechnungszeitraum, dividiert durch die tatsächliche Anzahl von Tagen im jeweiligen Zinsjahr.

§ 4 ZAHLUNGEN

(1) (a) *Zahlungen auf Kapital.* Zahlungen auf Kapital in Bezug auf die Schuldverschreibungen erfolgen nach Maßgabe des nachstehenden Absatzes 2 an das Clearing System oder dessen Order zur Gutschrift auf den Konten der jeweiligen Kontoinhaber des Clearing Systems gegen Vorlage und (außer im Fall von Teilzahlungen) Einreichung der die Schuldverschreibungen zum Zeitpunkt der Zahlung verbriefenden Globalurkunde bei der bezeichneten Geschäftsstelle der Emissionsstelle außerhalb der Vereinigten Staaten.

(b) *Zahlung von Zinsen.* Die Zahlung von Zinsen auf Schuldverschreibungen erfolgt nach Maßgabe von Absatz 2 an das Clearing System oder dessen Order zur Gutschrift auf den Konten der jeweiligen Kontoinhaber des Clearing Systems.

Die Zahlung von Zinsen auf Schuldverschreibungen, die durch die vorläufige Globalurkunde verbrieft sind, erfolgt nach Maßgabe von Absatz 2 an das Clearing System oder dessen Order zur Gutschrift auf den Konten der jeweiligen Kontoinhaber des Clearing Systems, und zwar nach ordnungsgemäßer Bescheinigung gemäß § 1(3)(b).

⁽³⁾ Der gesetzliche Verzugszinssatz beträgt für das Jahr fünf Prozentpunkte über dem von der Deutsche Bundesbank von Zeit zu Zeit bekanntgemachten Basiszinssatz, §§ 288 Absatz 1, 247 BGB.

(2) *Zahlungsweise.* Vorbehaltlich geltender steuerlicher und sonstiger gesetzlicher Regelungen und Vorschriften erfolgen zu leistende Zahlungen auf die Schuldverschreibungen in der frei handelbaren und konvertierbaren Währung, die am entsprechenden Fälligkeitstag die Währung des Staates der festgelegten Währung ist.

(3) *Vereinigte Staaten.* Für die Zwecke des § 1(3) und des Absatzes 1 dieses § 4 bezeichnet "**Vereinigte Staaten**" die Vereinigten Staaten von Amerika (einschließlich deren Bundesstaaten und des District of Columbia) sowie deren Territorien (einschließlich Puerto Rico, der U. S. Virgin Islands, Guam, American Samoa, Wake Island und Northern Mariana Islands).

(4) *Erfüllung.* Die Emittentin bzw. die Garantin wird durch Leistung der Zahlung an das Clearing System oder dessen Order von ihrer Zahlungspflicht befreit.

(5) *Zahltag.* Fällt der Fälligkeitstag einer Zahlung in bezug auf eine Schuldverschreibung auf einen Tag, der kein Zahltag ist, dann hat der Gläubiger keinen Anspruch auf Zahlung vor dem nächsten Zahltag am jeweiligen Geschäftsort. Der Gläubiger ist nicht berechtigt, weitere Zinsen oder sonstige Zahlungen aufgrund dieser Verspätung zu verlangen. Für diese Zwecke bezeichnet "**Zahltag**" einen Tag, der ein Tag (außer einem Samstag oder Sonntag) ist, an dem das Clearing System sowie alle betroffenen Bereiche des Trans-European Automated Real-time Gross Settlement Express Transfer System 2 ("**TARGET**") betriebsbereit sind, um die betreffenden Zahlungen weiterzuleiten.

(6) *Bezugnahmen auf Kapital und Zinsen.* Bezugnahmen in diesen Bedingungen auf Kapital der Schuldverschreibungen schließen, soweit anwendbar, die folgenden Beträge ein: den Rückzahlungsbetrag der Schuldverschreibungen; den vorzeitigen Rückzahlungsbetrag der Schuldverschreibungen; sowie jeden Aufschlag sowie sonstige auf oder in bezug auf die Schuldverschreibungen zahlbaren Beträge. Bezugnahmen in diesen Bedingungen auf Zinsen auf Schuldverschreibungen sollen, soweit anwendbar, sämtliche gemäß § 7 zahlbaren zusätzlichen Beträge einschließen.

(7) *Hinterlegung von Kapital und Zinsen.* Die Emittentin ist berechtigt, beim Amtsgericht Frankfurt am Main Zins- oder Kapitalbeträge zu hinterlegen, die von den Gläubigern nicht innerhalb von zwölf Monaten nach dem Fälligkeitstag beansprucht worden sind, auch wenn die Gläubiger sich nicht in Annahmeverzug befinden. Soweit eine solche Hinterlegung erfolgt, und auf das Recht der Rücknahme verzichtet wird, erlöschen die diesbezüglichen Ansprüche der Gläubiger gegen die Emittentin.

§ 5 RÜCKZAHLUNG

(1) *Rückzahlung bei Endfälligkeit.* Soweit nicht zuvor bereits ganz oder teilweise zurückgezahlt oder angekauft und entwertet, werden die Schuldverschreibungen zu ihrem Rückzahlungsbetrag am ██████████ 2014 (der "**Fälligkeitstag**") zurückgezahlt. Der Rückzahlungsbetrag in bezug auf jede Schuldverschreibung entspricht dem Nennbetrag der Schuldverschreibungen.

(2) *Vorzeitige Rückzahlung aus steuerlichen Gründen.* Die Schuldverschreibungen können insgesamt, jedoch nicht teilweise, nach Wahl der Emittentin mit einer Kündigungsfrist von nicht weniger als 30 und nicht mehr als 60 Tagen gegenüber der Emissionsstelle und gemäß § 14 gegenüber den Gläubigern vorzeitig gekündigt und zu ihrem vorzeitigen Rückzahlungsbetrag (wie nachstehend definiert) zuzüglich bis zum für die Rückzahlung festgesetzten Tag aufgelaufener Zinsen zurückgezahlt werden, falls die Emittentin als Folge einer Änderung oder Ergänzung der Steuer- oder Abgabengesetze und -Vorschriften der Republik Irland oder der Bundesrepublik Deutschland oder deren politischen Untergliederungen oder Steuerbehörden oder als Folge einer Änderung oder Ergänzung der Anwendung oder der offiziellen Auslegung dieser Gesetze und Vorschriften (vorausgesetzt diese Änderung oder Ergänzung wird am oder nach dem Tag, an dem die letzte Tranche dieser Serie von Schuldverschreibungen begeben wird wirksam) am nächstfolgenden Zinszahlungstag (wie in § 3(1) definiert) zur Zahlung von zusätzlichen Beträgen (wie in § 7 dieser Bedingungen definiert) verpflichtet sein wird und diese Verpflichtung nicht durch das Ergreifen vernünftiger der Emittentin zur Verfügung stehender Maßnahmen vermieden werden kann.

Eine solche Kündigung darf allerdings nicht (i) früher als 90 Tage vor dem frühestmöglichen Termin erfolgen, an dem die Emittentin verpflichtet wäre, solche zusätzlichen Beträge zu zahlen, falls eine Zahlung auf die Schuldverschreibungen dann fällig sein würde, oder (ii) erfolgen, wenn zu dem Zeitpunkt, zu dem die Kündigung erfolgt, die Verpflichtung zur Zahlung von zusätzlichen Beträgen nicht mehr wirksam ist.

Eine solche Kündigung hat gemäß § 14 zu erfolgen, Sie ist unwiderruflich, muss den für die Rückzahlung festgelegten Termin nennen und eine zusammenfassende Erklärung enthalten, welche die das Rückzahlungsrecht der Emittentin begründenden Umstände darlegt.

(3) *Kontrollwechsel*. Tritt ein Kontrollwechsel ein und kommt es innerhalb des Kontrollwechselzeitraums zu einer Absenkung des Ratings auf Grund des Kontrollwechsels (zusammen, ein "**Rückzahlungsereignis**"), hat jeder Gläubiger das Recht (sofern nicht die Emittentin, bevor die nachstehend beschriebene Rückzahlungsmittlung gemacht wird, die Rückzahlung der Schuldverschreibungen nach § 5(2) angezeigt hat), die Rückzahlung seiner Schuldverschreibungen durch die Emittentin zum Nennbetrag, zuzüglich angewachsener Zinsen bis zum Rückzahlungstag (ausschließlich), zu verlangen.

Für Zwecke dieses Wahlrechts:

bedeutet "**Rating Agentur**" Standard and Poor's Rating Services, eine Abteilung von The McGraw-Hill Companies, Inc. ("**S&P**") oder eine ihrer jeweiligen Nachfolgegesellschaften oder jede andere Rating Agentur vergleichbaren internationalen Ansehens, wie von Zeit zu Zeit durch die Garantin bestimmt;

gilt eine "**Absenkung des Ratings**" in Bezug auf einen Kontrollwechsel als eingetreten, wenn (a) innerhalb des Kontrollwechselzeitraums ein vorher für die Schuldverschreibungen vergebenes Rating einer Rating Agentur (i) zurückgezogen oder (ii) von einem Investment Grade Rating (BBB von S&P oder gleichwertig, oder besser) in ein non-Investment Grade Rating (BB+ von S&P oder gleichwertig, oder schlechter) geändert oder (iii) (falls das für die Schuldverschreibungen vergebene Rating einer Rating Agentur unterhalb des Investment Grade Ratings liegt) um einen ganzen Punkt (von BB+ nach BB von S&P oder eine ähnliche Absenkung eines gleichwertigen Ratings) abgesenkt wird oder (b) zur Zeit des Kontrollwechsels kein Rating für die Schuldverschreibungen vergeben ist und keine Rating Agentur während des Kontrollwechselzeitraums ein Investment Grade Rating für die Schuldverschreibungen vergibt (es sei denn, die Garantin ist trotz zumutbarer Anstrengungen innerhalb dieses Zeitraums nicht in der Lage ein solches Rating zu erhalten, ohne dass dies seine Ursache im Kontrollwechsel hat);

gilt ein "**Kontrollwechsel**" jedes Mal als eingetreten, wenn eine Person oder mehrere Personen (außer [REDACTED] und/oder seinen gesetzlichen Erben) (die "**relevante(n) Person(en)**"), die abgestimmt handeln, oder einer oder mehrere Dritte, die im Auftrag der relevanten Person(en) handeln, zu irgendeiner Zeit mittelbar oder unmittelbar (unabhängig davon, ob der Vorstand oder der Aufsichtsrat der [REDACTED] seine Zustimmung erteilt hat) (i) mehr als 50% des ausstehenden Grundkapitals der [REDACTED] oder (ii) eine solche Anzahl von Aktien der Emittentin hält bzw. halten oder erworben hat bzw. haben, auf die mehr als 50% der normalerweise bei Hauptversammlungen der Emittentin stimmberechtigten Stimmrechte entfallen;

ist der "**Kontrollwechselzeitraum**" der Zeitraum, der 120 Tage nach dem Eintritt eines Kontrollwechsels endet; und

ist der "**Rückzahlungstag**" der siebte Tag nach dem letzten Tag des Rückzahlungszeitraums.

Sofort nachdem die Emittentin von einem Rückzahlungsereignis Kenntnis erlangt, wird die Emittentin den Gläubigern gemäß § 14 Mitteilung vom Rückzahlungsereignis machen (eine "**Rückzahlungsmittlung**"), in der die Umstände des Rückzahlungsereignisses sowie das Verfahren für die Ausübung des in diesem § 5(3) genannten Wahlrechts angegeben sind.

Zur Ausübung dieses Wahlrechts muss der Gläubiger während der normalen Geschäftsstunden innerhalb eines Zeitraums (der "**Rückzahlungszeitraum**") von 45 Tagen, nachdem die Rückzahlungsmittlung veröffentlicht ist, eine ordnungsgemäß ausgefüllte und unterzeichnete Ausübungserklärung bei der angegebenen Niederlassung der Emissionsstelle einreichen (die "**Ausübungserklärung**"), die in ihrer jeweils maßgeblichen Form bei der angegebenen Niederlassung der Emissionsstelle erhältlich ist. Ein so ausgeübtes Wahlrecht kann nicht ohne vorherige Zustimmung der Emittentin widerrufen oder zurückgezogen werden.

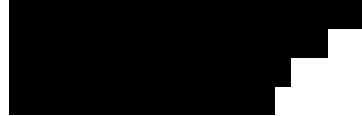
(4) *Vorzeitiger Rückzahlungsbetrag*. Für die Zwecke von Absatz 2 dieses § 5 und § 9, entspricht der vorzeitige Rückzahlungsbetrag einer Schuldverschreibung dem Rückzahlungsbetrag.

§ 6

DIE EMISSIONSSTELLE UND DIE ZAHLSTELLEN

(1) *Bestellung; bezeichnete Geschäftsstelle*. Die anfänglich bestellte Emissionsstelle und die anfänglich bestellten Zahlstellen und deren jeweilige bezeichnete Geschäftsstelle lauten wie folgt:

Emissions- und Zahlstelle:



Bundesrepublik Deutschland

Zahlstelle:



Luxemburg

Die Emissionsstelle und die Zahlstellen behalten sich das Recht vor, jederzeit ihre jeweilige bezeichnete Geschäftsstelle durch eine andere bezeichnete Geschäftsstelle in derselben Stadt zu ersetzen.

(2) *Änderung der Bestellung oder Abberufung; notwendige Zahlstellen.* Die Emittentin behält sich das Recht vor, jederzeit die Bestellung der Emissionsstelle oder einer Zahlstelle zu ändern oder zu beenden und eine andere Emissionsstelle oder zusätzliche oder andere Zahlstellen zu bestellen. Die Emittentin wird zu jedem Zeitpunkt (i) eine Emissionsstelle unterhalten und (ii) solange die Schuldverschreibungen an einer Börse notiert sind und die Regeln dieser Börse es verlangen, eine Zahlstelle (die die Emissionsstelle sein kann) mit bezeichneter Geschäftsstelle an dem von den Regeln dieser Börse vorgeschriebenen Ort unterhalten. Eine Änderung, Abberufung, Bestellung oder ein sonstiger Wechsel wird nur wirksam (außer im Insolvenzfall, in dem eine solche Änderung sofort wirksam wird), sofern die Gläubiger hierüber gemäß § 14 vorab unter Einhaltung einer Frist von mindestens 30 und nicht mehr als 45 Tagen informiert wurden.

(3) *Erfüllungsgehilfen der Emittentin.* Die Emissionsstelle und die Zahlstellen handeln ausschließlich als Erfüllungsgehilfen der Emittentin und übernehmen keinerlei Verpflichtungen gegenüber den Gläubigern und es wird kein Auftrags- oder Treuhandverhältnis zwischen ihnen und den Gläubigern begründet.

§ 7 STEUERN

Kapital und Zinsen werden von der Emittentin ohne Abzug oder Einbehalt gegenwärtiger oder zukünftiger Steuern, Abgaben oder amtlicher Gebühren gleich welcher Art gezahlt, die von oder in der Republik Irland oder der Bundesrepublik Deutschland oder für deren Rechnung oder von oder für Rechnung einer dort zur Steuererhebung ermächtigten Gebietskörperschaft oder Behörde auferlegt, erhoben oder eingezogen werden (nachstehend zusammen "**Quellensteuern**" genannt), es sei denn, ein solcher Abzug oder Einbehalt ist gesetzlich vorgeschrieben. In diesem letzteren Fall wird die Emittentin die zusätzlichen Beträge an Kapital und Zinsen zahlen, die erforderlich sind, damit der dem Gläubiger nach diesem Abzug oder Einbehalt zufließende Nettobetrag jeweils den Beträgen an Kapital und Zinsen entspricht, die ihm zustehen würden, wenn der Abzug oder Einbehalt nicht erforderlich wäre. Solche zusätzlichen Beträge sind jedoch nicht zahlbar wegen Steuern, Abgaben oder amtlicher Gebühren, die

- (a) von einer als Depotbank oder Inkassobeauftragter des Gläubigers handelnden Person oder sonst auf andere Weise zu entrichten sind als dadurch, dass die Emittentin aus den von ihm zu leistenden Zahlungen von Kapital oder Zinsen einen Abzug oder Einbehalt vornimmt; oder
- (b) wegen einer gegenwärtigen oder früheren persönlichen oder geschäftlichen Beziehung des Gläubigers zu der Republik Irland oder der Bundesrepublik Deutschland zu zahlen sind, und nicht allein deshalb, weil Zahlungen auf die Schuldverschreibungen aus Quellen in der Republik Irland oder der Bundesrepublik Deutschland stammen (oder für Zwecke der Besteuerung so behandelt werden) oder dort besichert sind; oder
- (c) aufgrund (i) einer Richtlinie oder Verordnung der Europäischen Union betreffend die Besteuerung von Zinserträgen oder (ii) einer zwischenstaatlichen Vereinbarung über deren Besteuerung, an der die Bundesrepublik Deutschland, die Republik Irland oder die Europäische Union beteiligt ist, oder (iii) einer gesetzlichen Vorschrift, die diese Richtlinie, Verordnung oder Vereinbarung umsetzt oder befolgt, abzuziehen oder einzubehalten sind; oder
- (d) aufgrund einer Rechtsänderung zahlbar sind, die später als 30 Tage nach Fälligkeit der betreffenden Zahlung von Kapital oder Zinsen oder, wenn dies später erfolgt, ordnungsgemäßer Bereitstellung aller fälligen Beträge und einer diesbezüglichen Bekanntmachung gemäß § 14 wirksam wird.

§ 8 VORLEGUNGSFRIST

Die in § 801 Absatz 1 Satz 1 BGB bestimmte Vorlegungsfrist wird für die Schuldverschreibungen auf zehn Jahre verkürzt.

§ 9 KÜNDIGUNG

(1) *Kündigungsgründe.* Jeder Gläubiger ist berechtigt, seine Schuldverschreibungen zu kündigen und deren sofortige Tilgung zu ihrem vorzeitigen Rückzahlungsbetrag (wie in § 5(4) beschrieben), zuzüglich etwaiger bis zum Tage der Rückzahlung aufgelaufener Zinsen zu verlangen, falls einer der folgenden Kündigungsgründe ("**Kündigungsgründe**") vorliegt:

- (a) die Emittentin zahlt Kapital oder Zinsen nicht innerhalb von 30 Tagen nach dem betreffenden Fälligkeitstag; oder
- (b) die Emittentin unterlässt die ordnungsgemäße Erfüllung irgendeiner anderen Verpflichtung aus den Schuldverschreibungen oder die Garantin unterlässt die Erfüllung einer Verpflichtung aus der Garantie, auf die in § 2 Bezug genommen wird, und diese Unterlassung kann nicht geheilt werden, oder, falls sie geheilt werden kann, dauert länger als 60 Tage fort, nachdem die Emissionsstelle hierüber eine Benachrichtigung von einem Gläubiger erhalten hat; oder
- (c) eine Kapitalmarktverbindlichkeit (wie in § 2(1) definiert) der Emittentin oder der Garantin oder einer ihrer wesentlichen Tochtergesellschaften vorzeitig zahlbar wird aufgrund einer Pflichtverletzung der für diese Kapitalmarktverbindlichkeit geltenden Bedingungen, oder die Emittentin oder die Garantin oder eine ihrer wesentlichen Tochtergesellschaften kommt einer Zahlungsverpflichtung in Höhe oder im Gegenwert von mehr als € 10.000.000 aus einer Kapitalmarktverbindlichkeit oder aufgrund einer Bürgschaft oder Garantie, die für eine Kapitalmarktverbindlichkeit Dritter gegeben wurde, nicht innerhalb von 30 Tagen nach ihrer Fälligkeit bzw. im Falle einer Bürgschaft oder Garantie nicht innerhalb von 30 Tagen nach Inanspruchnahme aus dieser Bürgschaft oder Garantie nach, es sei denn die Emittentin oder die Garantin oder die betreffende wesentliche Tochtergesellschaft bestreitet in gutem Glauben, dass die Zahlungsverpflichtung besteht oder fällig ist bzw. die Bürgschaft oder Garantie berechtigterweise geltend gemacht wird, oder falls eine für solche Verbindlichkeiten bestellte Sicherheit für die oder von den daraus berechtigten Gläubiger(n) in Anspruch genommen wird, oder
- (d) die Emittentin oder die Garantin oder eine ihrer wesentlichen Tochtergesellschaften gibt ihre Zahlungsunfähigkeit bekannt oder stellt ihre Zahlungen ein, oder
- (e) die Emittentin oder die Garantin oder eine wesentliche Tochtergesellschaft der Garantin beantragt oder ein Gericht eröffnet ein Konkurs-, Liquidations- oder sonstiges Insolvenzverfahren gegen eine von ihnen oder die Emittentin oder die Garantin oder eine wesentliche Tochtergesellschaft der Garantin, trifft oder bietet eine allgemeine Schuldenregelung zugunsten ihrer Gläubiger an oder ein Liquidator, Konservator oder ähnlicher Bevollmächtigter wird ernannt oder ein Dritter beantragt ein Konkurs-, Liquidations- oder sonstiges Insolvenzverfahren gegen die Emittentin oder die Garantin oder eine wesentliche Tochtergesellschaft der Garantin und ein solches Verfahren wird nicht innerhalb von 30 Tagen eingestellt, oder
- (f) die Emittentin oder die Garantin oder eine ihrer wesentlichen Tochtergesellschaften tritt in Liquidation, es sei denn, dies geschieht im Zusammenhang mit einer Verschmelzung oder einer anderen Form des Zusammenschlusses mit einer anderen Gesellschaft und diese Gesellschaft übernimmt alle Verpflichtungen, die die Emittentin oder die Garantin oder eine ihrer wesentlichen Tochtergesellschaften im Zusammenhang mit diesen Schuldverschreibungen eingegangen ist, oder
- (g) in der Republik Irland oder in der Bundesrepublik Deutschland ergeht ein Gesetz, eine Verordnung oder behördliche Anordnung, aufgrund derer die Emittentin oder die Garantin daran gehindert ist, die von ihr gemäß diesen Anleihebedingungen bzw. der Garantie übernommenen Verpflichtungen in vollem Umfang zu erfüllen und diese Lage ist nicht binnen 90 Tagen behoben, oder
- (h) die Garantie aus irgendeinem Grund nicht mehr gilt.

Das Kündigungsrecht erlischt, falls der Kündigungsgrund vor Ausübung des Rechts geheilt wurde.

(2) *Quorum*. In den Fällen des § 9(1)(b) oder (1)(c) wird eine Kündigung, sofern nicht bei deren Eingang zugleich einer der in § 9(1)(a), (1)(d), (1)(e), (1)(f), (1)(g) oder (1)(h) bezeichneten Kündigungsgründe vorliegt, erst wirksam, wenn bei der Emissionsstelle Kündigungserklärungen von Gläubigern von Schuldverschreibungen im Nennbetrag von mindestens 1/10 der dann ausstehenden Schuldverschreibungen eingegangen sind.

(3) *Benachrichtigung*. Eine Benachrichtigung, einschließlich einer Kündigung der Schuldverschreibungen gemäß vorstehendem Absatz 1 ist schriftlich gegenüber der Emissionsstelle zu erklären und persönlich oder per Einschreiben an deren bezeichnete Geschäftsstelle zu übermitteln.

§ 10 ERSETZUNG

(1) *Ersetzung*. Die Emittentin ist jederzeit berechtigt, sofern sie sich nicht mit einer Zahlung von Kapital oder Zinsen auf die Schuldverschreibungen in Verzug befindet, ohne Zustimmung der Gläubiger entweder die Garantin oder eine Tochtergesellschaft (wie nachstehend definiert) der Garantin an ihrer Stelle als Hauptschuldnerin (die "**Nachfolgeschuldnerin**") für alle Verpflichtungen aus und im Zusammenhang mit diesen Schuldverschreibungen einzusetzen, vorausgesetzt, dass:

- (a) die Nachfolgeschuldnerin alle Verpflichtungen der Emittentin in bezug auf die Schuldverschreibungen übernimmt;
- (b) die Emittentin und die Nachfolgeschuldnerin alle erforderlichen Genehmigungen erlangt haben und berechtigt sind, an die Emissionsstelle die zur Erfüllung der Zahlungsverpflichtungen aus den Schuldverschreibungen zahlbaren Beträge in der hierin festgelegten Währung zu zahlen, ohne verpflichtet zu sein, jeweils in dem Land, in dem die Nachfolgeschuldnerin oder die Emittentin ihren Sitz oder Steuersitz haben, erhobene Steuern oder andere Abgaben jeder Art abzuziehen oder einzubehalten;
- (c) die Nachfolgeschuldnerin sich verpflichtet hat, jeden Gläubiger hinsichtlich solcher Steuern, Abgaben oder behördlichen Lasten freizustellen, die einem Gläubiger bezüglich der Ersetzung auferlegt werden;
- (d) die Garantin, sofern sie nicht selbst die Nachfolgeschuldnerin ist, unwiderruflich und unbedingt gegenüber den Gläubigern die Zahlung aller von der Nachfolgeschuldnerin auf die Schuldverschreibungen zahlbaren Beträge zu Bedingungen garantiert, die den Bedingungen der Garantie entsprechen; und
- (e) der Emissionsstelle ein oder mehrere Rechtsgutachten von anerkannten Rechtsanwälten vorgelegt werden, die bestätigen, dass die Bestimmungen in den vorstehenden Unterabsätzen (a), (b), (c) und (d) erfüllt wurden.

Im Sinne dieses § 10 der Bedingungen bedeutet "**Tochtergesellschaft**" eine Kapitalgesellschaft, an der die ██████████ direkt oder indirekt insgesamt nicht weniger als 90% des Kapitals jeder Klasse oder der Stimmrechte hält.

(2) *Bekanntmachung*. Jede Ersetzung ist gemäß § 14 bekannt zu machen.

(3) *Änderung von Bezugnahmen*. Im Fall einer Ersetzung gilt jede Bezugnahme in diesen Bedingungen auf die Emittentin ab dem Zeitpunkt der Ersetzung als Bezugnahme auf die Nachfolgeschuldnerin und jede Bezugnahme auf das Land, in dem die Emittentin ihren Sitz oder Steuersitz hat, gilt ab diesem Zeitpunkt als Bezugnahme auf das Land, in dem die Nachfolgeschuldnerin ihren Sitz oder Steuersitz hat. Des weiteren gilt im Fall einer Ersetzung folgendes:

In § 7 und § 5(2) gilt eine alternative Bezugnahme auf die Republik Irland als aufgenommen (zusätzlich zu der Bezugnahme nach Maßgabe des vorstehenden Satzes auf das Land, in dem die Nachfolgeschuldnerin ihren Sitz oder Steuersitz hat).

§ 11 ÄNDERUNG DER ANLEIHEBEDINGUNGEN, GEMEINSAMER VERTRETER

(1) *Änderung der Anleihebedingungen*. Die Gläubiger können entsprechend den Bestimmungen des Gesetzes über Schuldverschreibungen aus Gesamtemissionen (Schuldverschreibungsgesetz - SchVG) durch einen Beschluß mit der in Absatz (2) bestimmten Mehrheit über einen im SchVG zugelassenen Gegenstand eine Änderung der Anleihebedingungen mit der Emittentin vereinbaren. Die Mehrheitsbeschlüsse der Gläubiger sind für alle Gläubiger gleichermaßen verbindlich. Ein

Mehrheitsbeschluß der Gläubiger, der nicht gleiche Bedingungen für alle Gläubiger vorsieht, ist unwirksam, es sei denn die benachteiligten Gläubiger stimmen ihrer Benachteiligung ausdrücklich zu.

(2) *Mehrheitserfordernisse.* Die Gläubiger entscheiden mit einer Mehrheit von 75 % der an der Abstimmung teilnehmenden Stimmrechte. Beschlüsse, durch welche der wesentliche Inhalt der Anleihebedingungen nicht geändert wird und die keinen Gegenstand der § 5 (3) Nr. 1 bis Nr. 8 des SchVG betreffen, bedürfen zu ihrer Wirksamkeit einer einfachen Mehrheit der teilnehmenden Stimmrechte.

(3) *Abstimmung ohne Versammlung.* Alle Abstimmungen werden ausschließlich im Wege der Abstimmung ohne Versammlung durchgeführt. Eine Gläubigerversammlung und eine Übernahme der Kosten für eine solche Versammlung durch die Emittentin finden ausschließlich im Fall des § 18 (4) Satz 2 SchVG statt.

(4) *Leitung der Abstimmung.* Die Abstimmung wird von einem von der Emittentin beauftragten Notar oder, falls der gemeinsame Vertreter zur Abstimmung aufgefordert hat, vom gemeinsamen Vertreter geleitet.

(5) *Stimmrecht.* An Abstimmungen der Gläubiger nimmt jeder Gläubiger nach Maßgabe des Nennwerts oder des rechnerischen Anteils seiner Berechtigung an den ausstehenden Schuldverschreibungen teil.

(6) *Gemeinsamer Vertreter.* Die Gläubiger können durch Mehrheitsbeschluß zur Wahrnehmung ihrer Rechte einen gemeinsamen Vertreter für alle Gläubiger bestellen.

Der gemeinsame Vertreter hat die Aufgaben und Befugnisse, welche ihm durch Gesetz oder von den Gläubigern durch Mehrheitsbeschluß eingeräumt wurden. Er hat die Weisungen der Gläubiger zu befolgen. Soweit er zur Geltendmachung von Rechten der Gläubiger ermächtigt ist, sind die einzelnen Gläubiger zur selbständigen Geltendmachung dieser Rechte nicht befugt, es sei denn der Mehrheitsbeschluß sieht dies ausdrücklich vor. Über seine Tätigkeit hat der gemeinsame Vertreter den Gläubigern zu berichten. Für die Abberufung und die sonstigen Rechte und Pflichten des gemeinsamen Vertreters gelten die Vorschriften des SchVG.

§ 12 GARANTIE

Die auf die Schuldverschreibungen anwendbaren Bestimmungen des § 11 finden sinngemäß auf die Bestimmungen der Garantie der [REDACTED] Anwendung.

§ 13 BEGEBUNG WEITERER SCHULDVERSCHREIBUNGEN, ANKAUF UND ENTWERTUNG

(1) *Begebung weiterer Schuldverschreibungen.* Die Emittentin ist berechtigt, jederzeit ohne Zustimmung der Gläubiger weitere Schuldverschreibungen mit gleicher Ausstattung (gegebenenfalls mit Ausnahme des Tags der Begebung, des Verzinsungsbeginns und/oder des Ausgabepreises) in der Weise zu begeben, dass sie mit diesen Schuldverschreibungen eine einheitliche Serie bilden.

(2) *Ankauf.* Die Emittentin ist berechtigt, Schuldverschreibungen im Markt oder anderweitig zu jedem beliebigen Preis zu kaufen. Die von der Emittentin erworbenen Schuldverschreibungen können nach Wahl der Emittentin von ihr gehalten, weiterverkauft oder bei der Emissionsstelle zwecks Entwertung eingereicht werden. Sofern diese Käufe durch öffentliches Angebot erfolgen, muss dieses Angebot allen Gläubigern gemacht werden.

(3) *Entwertung.* Sämtliche vollständig zurückgezahlten Schuldverschreibungen sind unverzüglich zu entwerten und können nicht wiederbegeben oder wiederverkauft werden.

§ 14 MITTEILUNGEN

(1) *Mitteilungen an das Clearing System.* Die Emittentin übermittelt alle die Schuldverschreibungen betreffenden Mitteilungen an das Clearing System zur Weiterleitung an die Gläubiger, vorausgesetzt, die Regeln der Börse, an der die Schuldverschreibungen notiert sind, lassen diese Form der Mitteilung zu. Jede derartige Mitteilung gilt am siebten Kalendertag nach dem Tag der Mitteilung an das Clearing System als den Gläubigern mitgeteilt.

(2) *Bekanntmachung.* Alle die Schuldverschreibungen betreffenden Mitteilungen werden in einer führenden Tageszeitung mit allgemeiner Verbreitung in der Bundesrepublik Deutschland, voraussichtlich der elektronische Bundesanzeiger, veröffentlicht. Jede derartige Mitteilung gilt am dritten Kalendertag nach

dem Tag der Veröffentlichung (oder bei mehreren Veröffentlichungen am dritten Kalendertag nach dem Tag der ersten solchen Veröffentlichung) als wirksam erfolgt.

(3) *Elektronische Bekanntmachung.* Alle die Schuldverschreibungen betreffenden Mitteilungen werden auf der Internetseite der Luxemburger Börse (www.bourse.lu) veröffentlicht. Jede derartige Mitteilung gilt am dritten Kalendertag nach dem Tag der Veröffentlichung (oder bei mehreren Veröffentlichungen am dritten Kalendertag nach dem Tag der ersten solchen Veröffentlichung) als wirksam erfolgt.

§ 15

ANWENDBARES RECHT, GERICHTSSTAND, ZUSTELLUNGSBEVOLLMÄCHTIGTER UND GERICHTLICHE GELTENDMACHUNG

(1) *Anwendbares Recht.* Form und Inhalt der Schuldverschreibungen sowie die Rechte und Pflichten der Gläubiger und der Emittentin bestimmen sich in jeder Hinsicht nach deutschem Recht.

(2) *Gerichtsstand.* Nicht ausschließlich zuständig für sämtliche im Zusammenhang mit den Schuldverschreibungen entstehenden Klagen oder sonstige Verfahren ("**Rechtsstreitigkeiten**") ist das Landgericht Frankfurt am Main.

(3) *Ernennung von Zustellungsbevollmächtigten.* Für etwaige Rechtsstreitigkeiten vor deutschen Gerichten hat die Emittentin die [REDACTED], Bundesrepublik Deutschland, zu ihrem Zustellungsbevollmächtigten in Deutschland bestellt.

(4) *Gerichtliche Geltendmachung.* Jeder Gläubiger von Schuldverschreibungen ist berechtigt, in jedem Rechtsstreit gegen die Emittentin oder in jedem Rechtsstreit, in dem der Gläubiger und die Emittentin Partei sind, seine Rechte aus diesen Schuldverschreibungen im eigenen Namen auf der folgenden Grundlage zu schützen oder geltend zu machen: (i) er bringt eine Bescheinigung der Depotbank bei, bei der er für die Schuldverschreibungen ein Wertpapierdepot unterhält, welche (a) den vollständigen Namen und die vollständige Adresse des Gläubigers enthält, (b) den Gesamtnennbetrag der Schuldverschreibungen bezeichnet, die unter dem Datum der Bestätigung auf dem Wertpapierdepot verbucht sind und (c) bestätigt, dass die Depotbank gegenüber dem Clearing System eine schriftliche Erklärung abgegeben hat, die die vorstehend unter (a) und (b) bezeichneten Informationen enthält; und (ii) er legt eine Kopie der die betreffenden Schuldverschreibungen verbriefenden Globalurkunde vor, deren Übereinstimmung mit dem Original eine vertretungsberechtigte Person des Clearing Systems oder des Verwahrers des Clearing Systems bestätigt hat, ohne dass eine Vorlage der Originalbelege oder der die Schuldverschreibungen verbriefenden Globalurkunde in einem solchen Verfahren erforderlich wäre. Für die Zwecke des Vorstehenden bezeichnet "**Depotbank**" jede Bank oder ein sonstiges anerkanntes Finanzinstitut, das berechtigt ist, das Wertpapierverwahrungsgeschäft zu betreiben und bei der/dem der Gläubiger ein Wertpapierdepot für die Schuldverschreibungen unterhält, einschließlich des Clearing Systems. Unbeschadet des Vorstehenden kann jeder Gläubiger seine Rechte aus den Schuldverschreibungen auch auf jede andere Weise schützen oder geltend machen, die im Land des Rechtsstreits prozessual zulässig ist.

§ 16

SPRACHE

Diese Bedingungen sind in deutscher Sprache abgefasst. Eine Übersetzung in die englische Sprache ist beigefügt. Der deutsche Text ist bindend und maßgeblich. Die Übersetzung in die englische Sprache ist unverbindlich.

		ESMA's proposed category	ZKA's proposed category	Comments
	<u>Annex V/XII</u>			
2.	Risk factors	CAT.A	CAT.C	An underlying may have specific risks not covered by the base prospectus. It might for instance happen that changes in the market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) impact on the underlying of a structured product (e.g. a share). Such product-specific risk factors should be provided in the final terms (as under the current administrative practice of certain authorities). A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market environment.
	<u>Annex V</u>			
4.5.	Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.	CAT.A	CAT.C	These items are not known at the time of drawing up the prospectus. They can only be determined at the time of the individual issue.
4.6.	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.	CAT.B	CAT.C	This section covers, among other things, specific information about payouts and price determination. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus (e.g. price determination based on the average intraday rate rather than on the closing rate). It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should therefore be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction

		ESMA's proposed category	ZKA's proposed category	Comments
				to a changing market environment. The differentiation between category B and category C seems particularly arbitrary where this item is concerned.
4.7.	(ii) Provisions relating to interest payable	CAT.B	CAT.C	It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus (e.g. with regard to interest adjustment clauses). It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market environment. The differentiation between category B and category C seems particularly arbitrary where this item is concerned.
	(v) The time limit on the validity of claims to interest and repayment of principal	CAT.A	CAT.C	It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market environment.
	Where the rate is not fixed,			
	(vi) statement setting out the type of underlying	CAT.A	CAT.C	Whether or not category A is appropriate depends on how "type" is interpreted by the competent authorities. If "type" is understood as an umbrella term (only referring to broad categories like "share" or "index"), category A might be a viable solution.

		ESMA's proposed category	ZKA's proposed category	Comments
				<p>If "type" requires more specific information (so that there is an overlap with the <i>description</i> of the underlying (4.7.(vii)), this item should be categorised as C (like the <i>description</i> of the underlying (4.7.(vii)). Making a distinction between the treatment of the <i>type</i> and the <i>description</i> of the underlying would be arbitrary in such cases. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market environment.</p>
	(viii) and of the method used to relate the two	CAT.B	CAT.C	<p>This overlaps with the <i>description</i> of the underlying (4.7.(vii)) and should therefore be in the same category. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not known at the time of drawing up the prospectus, and thus not included therein. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market environment. The differentiation between category B and category C seems particularly arbitrary where this item is concerned.</p> <p>We do not subscribe to ESMA's view that the authorities would have "<i>to review algebraic formulas along with ... related definitions and descriptions as regards ... completeness,</i></p>

		ESMA's proposed category	ZKA's proposed category	Comments
				<i>comprehensibility and consistency</i> " (par. 49, repeated in par. 51), which is not covered by the legal basis for the use of final terms. It seems to express the notion that certain information, by its very nature, does not qualify for inclusion in the final terms even if it can only be determined at the time of issuance.
	(x) Description of any market disruption or settlement disruption events that affect the underlying	CAT.B	CAT.C	It seems obvious that unforeseen developments in the markets (not known at the time of drawing up the prospectus, and thus not provided for therein, e.g. those resulting from the traffic restrictions caused by the Icelandic ash cloud in 2010) can trigger the need for additional market disruption or settlement disruption events which are consequently " <i>terms not known at the time of drawing up the prospectus</i> " within the meaning of Recital 17 of the Amended Prospectus Directive. The differentiation between category B and category C seems particularly arbitrary where this item is concerned.
	(xi) Adjustment rules with relation to events concerning the underlying	CAT.B	CAT.C	It seems obvious that unforeseen developments in the markets (not known at the time of drawing up the prospectus, and thus not provided for therein) can trigger the need for additional rules which are consequently " <i>terms not known at the time of drawing up the prospectus</i> " within the meaning of Recital 17 of the Amended Prospectus Directive. The differentiation between category B and category C seems particularly arbitrary where this item is concerned.
	(xiii) If the security has a derivative component in the interest payment, provide a clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument(s), especially under the circumstances when the risks are most evident.	CAT.B	CAT.C	This overlaps with 4.7.(vii) and should therefore be in the same category. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market

		ESMA's proposed category	ZKA's proposed category	Comments
				environment. The differentiation between category B and category C seems particularly arbitrary where this item is concerned.
4.9	(ii) An indication of yield. Describe the method whereby that yield is calculated in summary form.	CAT.B	CAT.C	The method whereby the yield is calculated is not known at the time of drawing up the prospectus. This can only be determined at the time of the individual issue.
4.10	Representation of debt security holders including an identification of the organisation representing the investors and provisions applying to such representation. Indication of where the public may have access to the contracts relating to these forms of representation.	CAT.A	CAT.C	There is no reason to name the bondholder trustee. In certain member states (e.g. Germany), this would conflict with legislation pertaining to the nomination of bondholder trustees. It is also inconsistent with 4.7.(xii), where the calculation (determination) agent is categorised as C. Approval of the bondholder trustee does not fall within the remit of the prospectus authorities.
4.14	In respect of the [...] country(ies) where admission to trading is being sought	CAT.A	CAT.C	In which countries particular securities issued under a base prospectus are offered or admitted to trading is one of the key questions decided by market conditions at the time of issuance (not known at the time of drawing up the prospectus, and thus not provided for therein). Each notification of a base prospectus would then require a supplement. In our view, it would be excessive to require the base prospectus to contain information on the taxation at source for all potential offering or listing countries. Providing for a large number of eligible alternatives would not be a reasonable solution.
5.2.1	(i) The various categories of potential investors to which the securities are offered	CAT.A	CAT.C	There is no reason why this should not be determined in the final terms. The alternative – i.e. providing for all conceivable alternatives to be chosen from – would be merely formalistic.
5.3.1	(ii) the method of determining the price and the process for its disclosure	CAT.B	CAT.C	In a quickly changing market environment, there may be a need to determine the method for certain securities immediately preceding the issuance (not known at the time of drawing up the prospectus, and thus not provided for therein), in particular when products have a long subscription period. Price determination might require recourse to market parameters not

		ESMA's proposed category	ZKA's proposed category	Comments
				<p>known at the time of drawing up the prospectus and thus not included therein.</p> <p>It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market environment. The differentiation between category B and category C seems particularly arbitrary where this item is concerned.</p>
6.1.	(i) An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved.	CAT.B	CAT.C	There may be a need to add further regulated or equivalent markets in final terms because of circumstances not known at the time of drawing up the prospectus. Particularly in the case of a notification there is a strong need for this option.
7.2.	An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report	CAT. A	CAT. C	These items are not known at the time of drawing up the prospectus. They can only be determined at the time of the individual issue.
7.3.	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material	CAT. A	CAT.C	These items are not known at the time of drawing up the prospectus. They can only be determined at the time of the individual issue.

		ESMA's proposed category	ZKA's proposed category	Comments
	interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.			
	<u>Annex XII</u>			
4.1.2	A clear and comprehensive explanation to help investors understand how the value of their investment is affected by the value of the underlying instrument (s), especially under the circumstances when the risks are most evident unless the securities have a denomination per unit of at least EUR 50 000 or can only be acquired for at least EUR 50 000 per security.	CAT.B	CAT.C	This is a consequence of the proposed re-categorisation of 4.1.7 as C.
4.1.7/ 4.1.13 (i), (ii)	A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of said rights.	CAT.B	CAT.C	This section covers, among other things, specific information about payouts and price determination. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not known at the time of drawing up the prospectus, and thus not included therein. It is basically impossible (and would make the base prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market environment. The differentiation between category B and category C seems particularly arbitrary where these items

		ESMA's proposed category	ZKA's proposed category	Comments
				<p>are concerned.</p> <p>We do not subscribe to ESMA's view that the authorities would have "<i>to review algebraic formulas along with ... related definitions and descriptions as regards ... completeness, comprehensibility and consistency</i>" (par. 49, repeated in par. 51), which is not covered by the legal basis for the use of final terms. It seems to express the notion that certain information is, by its very nature, not eligible for inclusion in the final terms even if it can only be determined at the time of issuance.</p>
4.1.14	In respect of the [...] country(ies) where admission to trading is being sought	CAT. A	CAT. C	<p>In which countries particular securities issued under a base prospectus are offered or admitted to trading is one of the key questions decided by market conditions at the time of issuance (not known at the time of drawing up the prospectus, and thus not provided for therein). Each notification of a base prospectus would then require a supplement. In our view, it would be excessive to require the base prospectus to contain information on the taxation at source for all potential offering or listing countries. Providing for a large number of eligible alternatives would not be a reasonable solution.</p>
4.2.2.	A statement setting out the type of the underlying	CAT. A	CAT. C	<p>Whether or not category A is appropriate depends on how "type" is interpreted by the competent authorities.</p> <p>If "type" is understood as an umbrella term (only referring to broad categories like "share" or "index"), category A might be a viable solution.</p> <p>If "type" requires more specific information (so that there is an overlap with the description of the underlying (4.2.2(ii),(iii)), this item should be categorised as C (like the description of the underlying (4.2.2(ii),(iii)). Making a distinction between the treatment of the type and the description of the underlying would be arbitrary in such cases. It might happen that a changing market environment (not known at the time of drawing up the prospectus, and thus not provided for therein) requires parameters not provided for in the base prospectus. It is basically impossible (and would make the base</p>

		ESMA's proposed category	ZKA's proposed category	Comments
				prospectus totally unreadable) to provide for any and all theoretically conceivable alternatives in the base prospectus. Such product-specific information should be provided in the final terms. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market environment.
	(ii) a description of the index if it is composed by the issuer	CAT.A	CAT.C	There is no reason why indices composed by the issuer should be treated differently from indices composed by external service providers. The bizarre result would be that all market participants except for the owner of the index could use an index as the underlying for structured products. For example: Goldman Sachs entities would have faced restrictions when using the well-established GSCI index family as the underlying (before selling this business), whereas all other market participants would have been totally free to use it.
5.2.1.	(i) The various categories of potential investors to which the securities are offered	CAT.A	CAT. C	There is no reason why this should not be determined in the final terms. The alternative – i.e. providing for all conceivable alternatives to be chosen from – would be merely formalistic.
	<u>Additional Information</u>			
	Country(ies) where the offer(s) to the public takes place / Country(ies) where admission to trading on the regulated market(s) is being sought	CAT.A	CAT.C	In which countries particular securities issued under a base prospectus are offered or admitted to trading is one of the key questions decided by market conditions at the time of issuance (not known at the time of drawing up the prospectus, and thus not provided for therein). With the proposed categorisation, each notification of a base prospectus would require a supplement. The alternative, namely listing all potential countries in the base prospectus itself, would result in it becoming the norm for base prospectuses to list all EEA countries).
	Annex XIII			

		ESMA's proposed category	ZKA's proposed category	Comments
2.	Risk factors	CAT.A	CAT.C	Securities may have specific risks not covered by the base prospectus. A supplement to the base prospectus would not be the right place for such information and would not allow for a sufficiently quick reaction to a changing market environment.
4.6.	Ranking of the securities being offered and/or admitted to trading, including summaries of any clauses that are intended to affect ranking or subordinate the security to any present or future liabilities of the issuer.	CAT.A	CAT.C	These items are not known at the time of drawing up the prospectus. They can only be determined at the time of the individual issue.
7.2.	An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report	CAT. A	CAT. C	These items are not known at the time of drawing up the prospectus. They can only be determined at the time of the individual issue.
7.3.	Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons' name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer's request a statement to that effect that such statement or report is included, in the form and context in which it is included, with the consent of that person who has authorised the contents of that part of the Securities Note.	CAT. A	CAT.C	These items are not known at the time of drawing up the prospectus. They can only be determined at the time of the individual issue.