

**IMPORTANT NOTE**

**THE WORDING SET OUT BELOW HAS BEEN DEVELOPED BY  
AFME'S SECURITISATION DIVISION.**

**IT IS PROVIDED FOR INFORMATION PURPOSES IN THE  
CONTEXT OF SECURITISATION ISSUES ONLY, AND HAS NOT  
BEEN DEVELOPED WITH ANY OTHER TYPES OF FIXED  
INCOME BONDS IN MIND.**

**MODIFICATIONS WITHOUT DIRECT NOTEHOLDER CONSENT<sup>1</sup>**

**Wording for Inclusion in Terms and Conditions of Securitisation Issues only:**

**[X]. Additional Right of Modification<sup>2</sup>:**

Notwithstanding the provisions of Condition [x] (*Modification and Waiver*)<sup>3</sup>, the Note Trustee shall be obliged, without any consent or sanction of the Noteholders, or, subject to paragraph (g)(C) below, any of the other Issuer Secured Creditors, to concur with the Issuer in making any modification (other than in respect of a Basic Terms Modification) to these Conditions or any other Transaction Document to which it is a party or in relation to which it holds security that the Issuer considers necessary:

- (a) for the purpose of complying with, or implementing or reflecting, any change in the criteria of one or more of the Rating Agencies which may be applicable from time to time, provided that:
  - (i) the Issuer certifies in writing to the Note Trustee that such modification is necessary to comply with such criteria or, as the case may be, is solely to implement and reflect such criteria; and
  - (ii) in the case of any modification to a Transaction Document<sup>4</sup> proposed by any of [the Swap Counterparty, the Account Bank, the Cash

<sup>1</sup> This **MODIFICATIONS WITHOUT DIRECT NOTEHOLDER CONSENT** has been developed by AFME's Securitisation Division members. It is provided for information purposes and does not constitute legal, regulatory, tax, financial or other professional advice and should not be relied upon or treated as a substitute for specific advice. AFME accordingly accepts no responsibility for its content, suitability or use.

<sup>2</sup> Where the transaction has both a Note Trustee and a Security Trustee, this provision in the Terms and Conditions and the terms of the relevant Transaction Documents would need to make clear that the mandatory consent requirement applies to both. If the Note Trustee has the power to direct the Security Trustee to agree amendments, this would need to be reflected in this provision.

<sup>3</sup> This wording distinguishes the obligation contained in this Condition from the discretion which will be included in the preceding "standard" modification wording.

<sup>4</sup> NB: corresponding language to be included in relevant Transaction Documents.

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Manager or the Liquidity Facility Provider]<sup>5</sup> in order (x) to remain eligible to perform its role in such capacity in conformity with such criteria and/or (y) to avoid taking action which it would otherwise be required to take to enable it to continue performing such role (including, without limitation, posting collateral or advancing funds):

(A) [the Swap Counterparty, the Account Bank, the Cash Manager or the Liquidity Facility Provider, as the case may be,] certifies in writing to the Issuer or the Note Trustee that such modification is necessary for the purposes described in paragraph (ii)(x) and/or (y) above (and in the case of a certification provided to the Issuer, the Issuer shall certify to the Note Trustee that it has received the same from [the Swap Counterparty, the Account Bank, the Cash Manager or the Liquidity Facility Provider, as the case may be]);

(B) either:

(I) [the Swap Counterparty, the Account Bank, the Cash Manager or the Liquidity Facility Provider, as the case may be,] obtains from each of the Rating Agencies written confirmation (or certifies in writing to the Issuer and the Note Trustee that it has been unable to obtain written confirmation, but has received oral confirmation from an appropriately authorised person at each of the Rating Agencies) that such modification would not result in a downgrade, withdrawal or suspension of the then current ratings assigned to any Class of the Notes by such Rating Agency and would not result in any Rating Agency placing any Notes on rating watch negative (or equivalent) and, if relevant, delivers a copy of each such confirmation to the Issuer and the Note Trustee; or

(II) the Issuer certifies in writing to the Note Trustee that the Rating Agencies have been informed of the proposed modification and none of the Rating Agencies has indicated that such modification would result in (x) a downgrade, withdrawal or suspension of the then current ratings assigned to any Class of the Notes by such Rating Agency or (y) such Rating Agency placing any Notes on rating watch negative (or equivalent); and

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<sup>5</sup> I.e. those counterparties that are subject to minimum ratings requirements.

- (C) [●]<sup>6</sup> pays all costs and expenses (including legal fees) incurred by the Issuer and the Note Trustee in connection with such modification;
- (b) in order to enable the Issuer and/or the Swap Counterparty<sup>7</sup> to comply with:
- (i) any obligation which applies to it under Articles 9, 10 and 11 of Regulation (EU) 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012 (including, without limitation, any associated regulatory technical standards and advice, guidance or recommendations from relevant supervisory regulators) (*EMIR*); or
  - (ii) any other obligation which applies to it under EMIR,

provided that the Issuer or the Swap Counterparty, as appropriate, certifies to the Note Trustee in writing that such modification is required solely for the purpose of enabling it to satisfy such obligation and has been drafted solely to such effect;

- (c) [for the purpose of complying with any changes in the requirements of Article 405 of the CRR, Article 17 of the AIFMD, Article 51 of the AIFMR or Section 15G of the Securities Exchange Act of 1934, as added by section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, after the Issue Date, including as a result of the adoption of Regulatory Technical Standards in relation to the CRR or the AIFMR or any other risk retention legislation or regulations or official guidance in relation thereto, provided that the Issuer certifies to the Note Trustee in writing that such modification is required solely for such purpose and has been drafted solely to such effect;]
- (d) [for the purpose of enabling the Notes to be (or to remain) listed on the Stock Exchange, provided that the Issuer certifies to the Note Trustee in writing that such modification is required solely for such purpose and has been drafted solely to such effect;]
- (e) [for the purposes of enabling the Issuer [or any of the other Transaction Parties<sup>8</sup>] to comply with FATCA (or any voluntary agreement entered into with a taxing authority in relation thereto), provided that the Issuer [or the relevant Transaction Party, as applicable,] certifies to the Note Trustee in writing that such modification is required solely for such purpose and has been drafted solely to such effect;]
- (f) [for the purposes of enabling the Issuer to comply with the provisions of Rule 17g-5 of the Securities Exchange Act of 1934, provided that the Issuer certifies to the Note Trustee in writing that such modification is required solely for such purpose and has been drafted solely to such effect;]

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<sup>6</sup> Identity of party bearing costs to be agreed upfront on a deal-by-deal basis.

<sup>7</sup> NB: corresponding language to be included in Swap Agreement.

<sup>8</sup> NB: corresponding language to be included in relevant Transaction Documents.

- (g) [for the purpose of complying with any changes in the requirements of the Credit Rating Agencies Regulation after the Issue Date, including as a result of the adoption of Regulatory Technical Standards in relation to the Credit Rating Agencies Regulation or regulations or official guidance in relation thereto, provided that the Issuer certifies to the Note Trustee in writing that such modification is required solely for such purpose and has been drafted solely to such effect,]<sup>9</sup>

(the certificate to be provided by the Issuer, the Swap Counterparty or the relevant Transaction Party, as the case may be, pursuant to paragraphs [●] to [●] above being a **Modification Certificate**), provided that:

- (A) [at least [30] [calendar] days'] prior written notice of any such proposed modification has been given to the Note Trustee;
- (B) the Modification Certificate in relation to such modification shall be provided to the Note Trustee both at the time the Note Trustee is notified of the proposed modification and on the date that such modification takes effect; and
- (C) the consent of each Issuer Secured Creditor [which is party to the relevant Transaction Document] / [which has a right to consent to such modification pursuant to the provisions of the [Security Trust and Intercreditor Deed]] has been obtained<sup>10</sup>,

and provided further that, other than in the case of a modification pursuant to Condition [x](b)(i)<sup>11 12</sup>:

- (D) other than in the case of a modification pursuant to Condition [x](a)(ii)<sup>13</sup>, either:
- (I) the Issuer obtains from each of the Rating Agencies written confirmation (or certifies in the Modification

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<sup>9</sup> The “menu” of modification options to be included will need to be discussed and agreed between the parties for each individual transaction. Not all of these options may be appropriate in every case.

<sup>10</sup> In certain transactions, the Secured Creditors grant the Security Trustee the ability to enter into amendment documents on their behalf, providing that the voting requirements have been met, and subject always to any entrenched rights that have been protected. If this is the case, this Condition should not override those provisions by requiring all parties to a Transaction Document to enter into the amendment document.

<sup>11</sup> I.e. the specific EMIR modification, where the additional protections should not be required because of the limited nature of the modifications permitted.

<sup>12</sup> Additional conditions which parties may wish to consider incorporating into a particular transaction include: (i) a requirement for prior notification to all / specific Transaction Parties, (ii) no objections from all / specific Transaction Parties, and (iii) legal opinions as to capacity and enforceability in relation to the modification document(s).

<sup>13</sup> In this case, a rating confirmation is already provided for in Condition [x](a)(ii)(B).

Certificate that it has been unable to obtain written confirmation, but has received oral confirmation from an appropriately authorised person at each of the Rating Agencies) that such modification would not result in (x) a downgrade, withdrawal or suspension of the then current ratings assigned to any Class of the Notes by such Rating Agency or (y) such Rating Agency placing any Notes on rating watch negative (or equivalent); or

- (II) the Issuer certifies in the Modification Certificate that it has informed the Rating Agencies of the proposed modification and none of the Rating Agencies has indicated that such modification would result in (x) a downgrade, withdrawal or suspension of the then current ratings assigned to any Class of the Notes by such Rating Agency or (y) such Rating Agency placing any Notes on rating watch negative (or equivalent); and
- (E) (I) the Issuer has provided at least [30] [calendar] days' notice to the Noteholders of each Class of the proposed modification in accordance with Condition [●] (*Notices*) and by publication on Bloomberg on the "Company News" screen relating to the Notes, and (II) Noteholders representing at least 10 per cent. of the aggregate Principal Amount Outstanding of the most senior Class of Notes<sup>14</sup> then outstanding have not contacted the Note Trustee<sup>15 16</sup> in writing (or otherwise in accordance with the then current practice of any applicable clearing system through which such Notes may be held) within such notification period notifying the Note Trustee that such Noteholders do not consent to the modification.

If Noteholders representing at least 10 per cent. of the aggregate Principal Amount Outstanding of the most senior Class of Notes then outstanding have notified the Note Trustee<sup>17</sup> in writing (or otherwise in accordance with the

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<sup>14</sup> Note that this provision currently allows only the most senior Class to object. To be considered on a deal-by-deal basis. Also consider whether specific disclosure is required (risk factors etc.).

<sup>15</sup> NB: language providing for Note Trustee to process objections to be included in Trust Deed if not otherwise covered by the usual boilerplate.

<sup>16</sup> If the Note Trustee is not able to process SWIFT messages and therefore cannot be named as a recipient in this provision, the Issuer should be named as the recipient and be required to certify to the Note Trustee that it has not received the requisite percentage of objections. This provision may also need to be amended for retail transactions.

<sup>17</sup> Although not specifically provided for, Noteholders would be free to engage with the Issuer / Arranger in relation to a proposed modification either through the Note Trustee or directly. If considered appropriate in a particular transaction, this provision could require that any objections be copied to the Issuer / Arranger.

then current practice of any applicable clearing system through which such Notes may be held) within the notification period referred to above that they do not consent to the modification, then such modification will not be made unless an Extraordinary Resolution of the Noteholders of the most senior Class of Notes then outstanding is passed in favour of such modification in accordance with Condition [x] (*Meetings of Noteholders*).

Objections made in writing other than through the applicable clearing system must be accompanied by evidence to the Note Trustee's satisfaction (having regard to prevailing market practices) of the relevant Noteholder's holding of the Notes.

Other than where specifically provided in this Condition [x] (*Additional Right of Modification*) or any Transaction Document:

- (a) when implementing any modification pursuant to this Condition [x] (*Additional Right of Modification*) (save to the extent the Note Trustee considers that the proposed modification would constitute a Basic Terms Modification), the Note Trustee shall not consider the interests of the Noteholders, any other Issuer Secured Creditor or any other person and shall act and rely solely and without further investigation on any certificate or evidence provided to it by the Issuer or the relevant Transaction Party, as the case may be, pursuant to this Condition [x] (*Additional Right of Modification*) and shall not be liable to the Noteholders, any other Issuer Secured Creditor or any other person for so acting or relying, irrespective of whether any such modification is or may be materially prejudicial to the interests of any such person; and
- (b) the Note Trustee shall not be obliged to agree to any modification which, in the sole opinion of the Note Trustee would have the effect of (i) exposing the Note Trustee to any liability against which is has not be indemnified and/or secured and/or pre-funded to its satisfaction or (ii) increasing the obligations or duties, or decreasing the rights or protection, of the Note Trustee in the Transaction Documents and/or these Conditions.

Any such modification shall be binding on all Noteholders and shall be notified by the Issuer as soon as reasonably practicable to:

- (c) so long as any of the Notes rated by the Rating Agencies remains Outstanding, each Rating Agency;
- (d) the Issuer Secured Creditors; and
- (e) the Noteholders in accordance with Condition [●] (*Notices*).