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Finance for Europe

European High Yield Primary Market Practice Guidelines

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Association for Financial Markets in Europe
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Contents

CHAPTER 1: PURPOSE AND SCOPE OF GUIDELINES

1.1	This document (the "Guidelines") is intended to provide certain background and recommended guidance for syndicated primary market offerings of non-investment grade notes, also known as "high yield bonds" in the European Union and the United Kingdom.[1] The Guidelines also provides the standard form of the New York law version of the AFME agreement among initial purchasers for use in such offerings. See Appendix A (*AFME Standard Form - Agreement Among Initial Purchasers*). Certain sections of the Guidelines are solely descriptive and aim to provide an overview of the high yield issuance process to first time or potential first time issuers (and other interested parties). Where appropriate, other sections of the Guidelines reflect suggested best practice for market participants. It is important to note that the circumstances of each transaction will vary and that appropriate legal, regulatory and other advice should be sought as necessary. For the avoidance of doubt, any guidance contained herein, or in the documents referred to herein, is neither mandatory nor binding and is intended to provide background and instruction for European high yield transactions. ***Issuers and AFME members are encouraged to consider the Guidelines when participating in offerings of high yield bonds*.**
1.2	The Guidelines focus on European high yield bond transactions and, in general, do not address the structures, terms or other aspects of high yield bond transactions conducted outside of Europe. The Guidelines do not apply to offerings of investment grade notes. Everything in the Guidelines remains subject to applicable law and regulations, and certain items in the Guidelines may not be applicable to, or appropriate for, every European high yield bond transaction. In particular, the Guidelines consider the typical approach in offerings where securities are sold outside the United States in reliance on Regulation S ("Regulation S") and concurrently within the United States to Qualified Institutional Buyers in reliance on Rule 144A ("Rule 144A") of the U.S. Securities Act of 1933. Practice in an offering conducted wholly outside of the U.S. under Regulation S may vary. Since 1 January 2021 there have been two market abuse regimes in relation to the Market Abuse Regulation ("MAR"): the EU regime under the EU Market Abuse Regulation ("EU MAR") and the UK market abuse regime ("UK MAR"). UK MAR is similar to EU MAR and has been designed to ensure that UK markets and financial instruments continue to be subject to the same requirements as under EU MAR. As there is no material divergence between the implementation of MAR in the European Union and the United Kingdom, this document will refer to both EU MAR and UK MAR collectively as "MAR". However, AFME will continue to monitor any divergence between EU MAR and UK MAR that may emerge (e.g., interpretation or rulemaking). This guidance is intended as an overview and does not purport to be comprehensive or all-inclusive. No representation or warranty is provided by AFME or any contributor, and in particular nothing in the Guidelines is intended to constitute legal or other advice on any matter whatsoever. No reliance should be placed on the Guidelines and parties should seek appropriate advice before contemplating or entering into any issuance or arrangement of the types described herein.
1.3	**Miscellaneous** Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the relevant Purchase Agreement.

[1] Unless the context requires otherwise, "Europe" means the European Union and the United Kingdom, collectively.

	Wherever appropriate in this document, a singular term shall be construed to mean the plural where necessary, and a plural term the singular. The terms “notes” and “bonds”, as well as the terms “managers” and “initial purchasers” , as well as the terms “offering memorandum,” “offering document” and “disclosure document” are used interchangeably in this document, and shall have the same meanings.

CHAPTER 2: TRANSACTION PARTICIPANTS

2.1	**The Group, the Issuer and Related Entities** A group of entities that seeks to borrow money from investors through the issuance of notes is often broadly referred to as the "group". The "issuer" is the party that issues the notes and delivers them to the initial purchasers (who then resell them to investors). An issuer can be a single corporate entity or it can be a specific entity within the corporate group that receives the net proceeds of the offering and is the primary obligor under the notes. In the "group" scenario, the issuer may be the "parent company" within the group, a subsidiary (subsidiaries specially formed to issue notes are referred to as "finance subsidiaries") or a special purpose entity that is not part of the operating group (an "orphan issuer"). In addition, in certain circumstances there may be two issuers of the notes (commonly referred to as "co-issuers"), typically one being a U.S. issuer and the other a European issuer. Private note issuances may have different structures. Guarantees of the notes may be provided in certain circumstances by material entities within the group (the "guarantors") for the benefit of the noteholders (subject to applicable guarantee and other local law limitations that may vary according to jurisdiction). If the group is ultimately owned by a private equity firm or similar fund or holding company (also known as "sponsors"), these sponsors will play an active role in negotiating the relevant documentation, particularly the terms of the notes. "Group" as used herein refers to the "restricted group", *i.e.*, the members of the group (usually the subsidiaries of the issuer, or parent if the parent is not the issuer) that are subject to the restrictive covenants of the indenture. Members of the group that are not subject to the restrictive covenants of the indenture would be designated as "unrestricted subsidiaries".
2.2	**The Initial Purchasers or Managers** The initial purchasers (*i.e.*, institutions that act as the initial purchasers of the notes and coordinate the marketing and distribution of the notes on behalf of the issuer) are typically large commercial or investment banks. The group of all initial purchasers in a transaction may be referred to as the "syndicate". The issuer may designate one or more initial purchaser(s) to act as "(joint) lead manager(s)" (also referred to as the "joint lead bookrunner(s)", "active / physical bookrunner(s)" and/or "(joint) global coordinator(s)") to organize and drive communications with investors and other members of the syndicate (including providing general transaction updates and facilitating orders provided to other members of the syndicate), assist with obtaining credit ratings, engage counsel for the initial purchasers ("managers' counsel"), coordinate marketing efforts and the order book[2], provide certain environmental, social and governance ("ESG") related services and provide certain guidance to the group on strategy (including assisting the issuer in considering the structure and timing of the offering, covenants and pricing). The appointment of the lead manager(s) may happen earlier than the appointment of the other initial purchaser(s) (sometimes also referred to as the "joint bookrunners", "co-manager(s)" or the "passive" manager(s) or bookrunner(s)) and the terms of the appointment should make clear the compensation of, and the services to be provided by, the lead manager(s) and any other initial purchaser(s). Such appointment and terms

[2] If there are multiple lead bookrunners, the issuer will usually designate one of them as representative for settlement and to oversee billing and delivery ("B&D") at closing.

	may be formalized in an engagement/mandate letter between the issuer and the lead managers. See Section 3.5 (*Manager Engagement Letter*). The passive managers: (a) should be notified by the issuer of their appointment as passive managers, and provided with any relevant draft documentation at a reasonable time prior to the announcement of the transaction[3] to allow them to familiarize themselves with the proposed transaction and review related documentation, and to allow sufficient time for them to obtain any necessary internal approvals (including know-your-customer, or "KYC", procedures); and (b) should be (i) provided with an opportunity to participate in any transaction due diligence calls that take place after their appointment[4] (and therefore, to the extent possible, pre-announcement business, legal, accounting or other due diligence calls should be scheduled in a manner that permits all managers to participate) and (ii) invited to a discussion with counsel to the managers (commonly referred to as "onboarding") in order to brief the managers on the legal due diligence carried out to date and any relevant findings.
2.3	**Auditors** The auditors of the issuer, in addition to auditing the issuer's year-end financial statements, must be separately engaged by the issuer to carry out additional procedures, including to (i) review and provide a limited review report for any interim financial statements (if applicable),[5] (ii) review certain other financial information of the issuer included in the offering documents, (iii) provide comfort letters to the initial purchasers and the board of directors of the issuer and (iv) participate in auditor due diligence calls with the initial purchasers as part of their due diligence investigation. In certain situations additional financial statements or other financial information of the issuer or others may need to be included in the offering document, such as in the case of an acquisition, or if the financial statements are prepared on the parent level of the group, auditors of the persons in respect of which financial statements or other financial information is included in the offering document, respectively, must be engaged. Financial statements required to be included in the offering document need to be identified on a case-by-case basis. In the comfort letter, the auditors will confirm, among others, the procedures conducted by the auditor with respect to the financial statements included in the offering document, the accuracy of certain financial information included in the offering memorandum and will typically provide "negative assurance" comfort confirming the absence of any material changes to certain specified financial line items since the date of the most recent financial statements included in the offering memorandum up until the cut-off date, except as specified in the comfort letter. The auditors will provide a comfort letter dated the day of Pricing (as defined below) and a "bring-down" comfort letter dated the day the offering closes. The issuer should consider having an early discussion with the auditors in order to identify which audited and reviewed financial statements can be made available, the level of comfort that can be provided on the issuer's financial figures included in the offering memorandum, the line items that will be subject to "stub period" procedures, and

[3] Additional managers may also be invited between announcement and Pricing.

[4] The lead initial purchasers will generally conduct much of their due diligence prior to the appointment of the passive managers. Upon appointment, the passive managers should inform themselves of the due diligence that has been carried out to date and supplement it with additional reasonable requests, if necessary in their view. The passive managers should carefully review the proposed disclosure documents and make their own assessment of the transaction and the merits and risks involved.

[5] The review of interim financial statements is typically performed in a manner consistent with ISRE 2410 or the local GAAS equivalent.

	the relevant "cut-off" dates for the comfort letter and bring-down comfort letter as well as any ancillary documentation that will be required by the auditors. It is also important to confirm with the auditors that their comfort letters will be prepared in accordance with AU-C Section 920 (formerly known as SAS72) promulgated by the American Institute of Certified Public Accounts (AICPA), which is the standard for any offerings that will be marketed into the United States. During auditor due diligence calls, auditors provide information to the initial purchasers relating to their audit and review of the financial statements and any potential conflicts of interest.[6] The auditors will also assist the issuer in preparing and reporting alternative performance measures (APMs) and non-U.S. GAAP or non-IFRS financial items[7], and by reviewing the offering document (e.g., the section of the offering memorandum entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations"). If the issuer or the group has undertaken a significant acquisition or disposition, or such acquisition or disposition is probable, the issuer (with the assistance of its auditors and/or the auditors of the target) may be required to prepare pro forma financial information[8] for inclusion in the offering memorandum (including providing stand-alone historical financial statements of the relevant target entity). The analysis of whether such pro forma financial statements (including stand-alone historical financial statements for the target) will be necessary requires the involvement of the issuer, auditor, counsel and the initial purchasers.[9] Pro forma financial information is expected to be covered in the comfort letter. The auditors should be onboarded at the early stages of the preparation of a high yield bond offering (ideally at the commencement of the preparations for the offering) to assess whether pro forma and stand-alone historical financial statements can be prepared within the contemplated timeframe for the offering and whether there are any other gating items with respect to financial information to be included in the offering memorandum.
2.4	**Trustee** A trustee is appointed by the issuer to represent the interests of the noteholders and is responsible for performing certain duties under the indenture with respect to the notes from issuance until maturity. For example, the trustee has the right to issue "default notices" upon the occurrence of an event of default (and will be required to do so upon instruction by noteholders holding, typically, at least 25% or 30%, of the aggregate principal amount of the notes) or at the trustee's discretion in certain instances. The trustee's duties also include, among other things, helping to facilitate the process of obtaining noteholder consent for amendments to, or waivers of, certain terms of the indenture as well as guarantor accessions and redemption of the notes. It is typical for a trustee not to take any action unless it is provided with specific instructions and indemnity from the noteholders and/or provided with cash collateral or appropriate security.

[6] Subject to the arrangement letter or a hold harmless letter.

[7] One of the most common APMs is EBITDA (earnings before interest, taxes, depreciation and amortization). Because it eliminates the effects of financing and accounting decisions, EBITDA is often used to assess a company's ability to service its debt. However, given that EBITDA is neither an IFRS nor GAAP financial measure, companies include certain adjustments and may calculate it differently. For example, one company could define EBITDA as operating profit plus depreciation and amortization expenses whereas another company could additionally add impairment of intangible assets, plant and equipment to the calculation.

[8] The pro forma financial information would recast the issuer's financial statements "as if" the relevant acquisition or disposition had occurred at the beginning of the period presented (in the case of income statement data) or as of the last balance sheet date (for balance sheet data).

[9] Regulation S-X Rule 3-05 and Regulation S-X Article 11 set forth the requirements for stand-alone and pro forma financial statements, respectively, in U.S. registered public offerings. Although the Rule 144A / Regulation S market is not subject to these requirements, they are frequently looked to as guidance by market participants because they inform the analysis of what information investors may consider material to their investment decision.

	Actions by the trustee following an instruction by the issuer typically require an officer's certificate from the issuer and an opinion of (NY) counsel certifying compliance with the respective provisions of the indenture and completion of the required conditions precedent. The trustee or its counsel will review the indenture as well as the offering memorandum, and specifically the "Description of the Notes", which describes the terms of the notes, note covenants, events of default and summarizes the key mechanics of the indenture.
2.5	**Agents** The issuer will appoint a number of agents to perform a range of administrative duties. It is not uncommon for a number of these duties to be performed by the same entity (or an affiliate thereof). The paying agent, registrar and calculation agent will often be the same entity as the trustee or entities affiliated with the trustee.
2.5.1	**Paying Agent** The paying agent is responsible for distributing payments to the noteholders, most importantly, interest payments, on behalf of the issuer. The issuer may change any paying agent and may appoint additional paying agents, in which case one paying agent will play a coordinating role (the "principal paying agent").
2.5.2	**Registrar** The registrar keeps a register of the record holders of the notes and of the transfer and exchange of the notes. The registrar is often the same entity (or an affiliate thereof) as the entity that acts as paying agent or custodian.
2.5.3	**Escrow Agent** Under certain circumstances, often in the context of an acquisition, the proceeds of a high yield bond issuance may be held in escrow until completion of the relevant conditions precedent. The terms of this arrangement are governed by an escrow agreement, under which an escrow agent is appointed to hold and administer the relevant funds. Typically, the escrow account is pledged in favor of the trustee pending the release of the proceeds of the notes issuance. The release of the proceeds will usually require the provision by the issuer of an officer's certificate certifying satisfaction of the conditions precedent.[10]
2.5.4	**Calculation Agent** A calculation agent, or agent bank, is required for notes that pay interest based on a floating rate. The calculation agent calculates the coupon payments for each interest period based on the formula(e) set out in the indenture.
2.5.5	**Security Agent** The notes may be secured by assets of the issuer, the guarantor(s) or other obligor(s). In such a case, a security agent will be appointed to hold security over the relevant assets on behalf of the noteholders. Security agents handle the administrative aspects of the security (such as holding title deeds and other documents relating to charged property), and carry out realization and other enforcement actions in accordance with the instructions of the secured creditors. The security agent may be affiliated with, or may be the same legal entity as, the trustee.

[10] For example, completion of an acquisition being financed via the escrowed bond proceeds.

2.5.6	**Placement Agent** In the case of private placements of notes, issuers typically hire a placement agent who assists the issuer in finding potential investors in the notes. As opposed to the managers in 'public' high yield bond transactions, placement agents in private placements do not purchase and then resell the securities (as the relevant exemption under the Securities Act relied on is Rule 903 of Regulation S for sales made outside the United States and/or Section 4(a)(2) for sales made in the United States) and therefore typically do not conduct due diligence.
2.5.7	**Listing Agent** European high yield notes are almost always listed on a stock exchange.[11] In obtaining such a listing for the notes, the issuer may, depending on the exchange, appoint a listing agent to liaise with the relevant stock exchange. Together with issuer's counsel, the listing agent will prepare and submit all of the required materials and information (including review of certain sections of the offering memorandum relating to the listing), and will participate in discussions with the stock exchange representatives until the notes have been approved for listing. For European high yield offerings, listing generally occurs as soon as practicable after closing (other than in jurisdictions where listing may be required at closing). Documentation relating to the notes (most notably the indenture) will typically be made available to noteholders at the offices of the relevant exchange.
2.6	**Legal Counsel**
2.6.1	**Managers' Counsel** The lead manager(s) will retain external legal counsel to represent it (or them) and the other manager(s) in the offering. Although practices may vary depending on the nature of the transaction, the managers' counsel will generally have primary responsibility for drafting the description of the notes, the indenture, the purchase agreement and other ancillary documents (including the signing and closing memorandum and attached closing certificates) and review other documents and closing deliverables, such as legal opinions. Managers' counsel will also perform documentary due diligence on the issuer and its business and will review and comment on the offering memorandum prepared by the issuer with the assistance of its counsel. Managers' counsel typically also takes a leading role in coordinating various due diligence and disclosure related processes, including comfort, back-up verification, legal opinions and due diligence calls. In a transaction where securities are sold into the United States under Rule 144A, both issuer's and managers' counsel are expected to deliver the requisite legal opinions and a Rule 10b-5 disclosure or "negative assurance" letter relating to the offering. See Section 3.8 (*Legal Opinions and 10b-5 Disclosure Letters*). The lead manager will also appoint, or coordinate retention by the managers of, local counsel in each relevant or material jurisdiction that requires such an appointment. Local counsel may be appointed for a number of reasons, depending on the structure of the transaction. For example, local counsel might be appointed if (i) the issuer group is incorporated or has operations in a foreign country or countries, (ii) the notes are guaranteed by a foreign entity or entities, (iii) the notes are secured by assets in a foreign

[11] European high yield bonds are typically listed on a Multilateral Trading Facility (MTF), which is the exchange regulated (also known as "unregulated") market of the relevant stock exchange. Common listing venues include the Euro MTF market of the Luxembourg Stock Exchange (LuxSE) and the Global Exchange Market of Euronext Dublin. Issuers that are not otherwise subject to MAR may choose to list on The International Stock Exchange in the Channel Islands or on the Securities Official List of the LuxSE without admission to trading on its Euro MTF market.

	country or countries or (iv) certain transaction documents are governed by the laws of a foreign country.
2.6.2	**Issuer's Counsel** The issuer will appoint external legal counsel to represent it and the issuer group in the offering ("issuer's counsel"). Issuer's counsel will assist the issuer in drafting the offering memorandum and negotiating the description of notes and other transaction documents (such as the purchase agreement) with managers' counsel or other relevant counsel. The issuer will also appoint local counsel in each relevant or material jurisdiction that requires such an appointment. Reasons for any such appointment may be similar to those referred to in Section 2.6.1 (*Managers' Counsel*) above with respect to the appointment of the managers' local counsel.
2.6.3	**Trustee's and other Agents' Counsel** The trustee and other agents (e.g., security agent) will usually appoint counsel to represent their interests in the offering. Trustee's counsel will review all note-related documentation and will negotiate these documents with issuer's counsel. Security Agent's counsel will review all security documents and negotiate with managers' counsel.
2.7	**Central Securities Depositories ("CSDs")** Euroclear Bank SA/NV ("Euroclear") and Clearstream Banking S.A. ("Clearstream") are the principal CSDs that settle trades in international debt securities. The Depository Trust Company ("DTC") is the principal CSD that settles trades in U.S. dollar denominated debt securities (although U.S. dollar denominated debt securities may also settle through Euroclear and Clearstream). Syndicated high yield notes are no longer issued in definitive form (*i.e.*, in paper certificates) but are instead generally represented by global certificates which are held in the CSDs. Direct customers of CSDs can hold their securities in one of the CSDs through "participant accounts". This is known as a "book entry", and ownership of an interest in a global note is evidenced by the book entry on the account. Investors who do not have CSD accounts hold their securities through banks or brokers acting as custodians. In March 2022, Euroclear and Clearstream introduced a new settlement mechanism for transactions settling through Euroclear/Clearstream. See Chapter 11 (*Closing and Settlement*).
2.8	**Credit Rating Agencies** Although credit rating agencies (e.g., Moody's, Standard & Poor's and Fitch) are not direct participants in the debt capital markets, these parties may assign a rating to the issuer and to the notes. The ultimate rating determinations that are assigned can be very important, but they do not represent a recommendation to buy, sell or hold securities and are subject to revision or withdrawal at any time. The credit rating process usually commences early in the transaction with the issuer and the lead manager(s) preparing a ratings agency presentation. Due to their importance, both the expected and actual ratings assigned to the issuer and the notes by the credit rating agencies can influence the structure of the entire transaction, and the ratings should therefore ideally be obtained prior to the launch of the transaction.

2.9	**Second Party Opinion Providers** Second party opinion providers are external reviewers retained by the issuer to confirm the alignment of the bond and/or the ESG financing framework with international standards/best practice (e.g., the core components of the ICMA "Green Bond Principles") in the form of a second party opinion. See Section 3.13 (*Second Party Opinion – SPO*).
2.10	**Experts and Consultants** Experts and consultants such as mining engineers, appraisers, industry consultants and accounting firms may be retained in certain transactions. In addition to a report, these experts and consults typically also issue reliance and/or consent letters in connection with their work.[12] See Section 3.14 (Reliance and Consent Letters).

[12] For example: Mining and oil and gas experts prepare reserve reports that establish the quantity of reserves available to the issuer. Industry consultants prepare market reports that describe the issuer's industry and competitors. Accounting firms may be retained in project finance transactions to prepare financial projections for the project being funded. Appraisers prepare valuation reports on the real estate portfolio of an issuer in the real estate sector.

CHAPTER 3: TRANSACTION DOCUMENTATION

	Relevant Documents:
3.1	**Offering Memorandum** For a Rule 144A/Reg S high yield offering, the standards for the preparation of the offering memorandum are substantially similar to the standards applicable to securities offerings registered under the U.S. Securities Act of 1933. Generally, market participants look to U.S. Securities and Exchange Commission ("SEC") disclosure rules, registration statement forms and precedent offerings as guidance. The offering memorandum is designed to provide potential investors in the notes with certain material information in order to enable them to make an informed investment decision. The offering memorandum may include, among other things, (i) information about the business and management structure of the issuer or company group; (ii) the business's strengths and strategies; (iii) material risks associated with investing in the issuer and the notes; (iv) the issuer's financial condition and operating results; (v) a description of the terms and conditions of the notes; (vi) information about significant shareholders and their relationships with the issuer; (vii) biographies of executive officers and directors and their relationships with the issuer; (viii) any significant pending or threatened litigation; (ix) a description of material contracts; (x) descriptions of material financing arrangements and indebtedness; (xi) certain tax considerations in connection with the bond offering; (xii) an explanation of the use of proceeds of the offering and (xiii) the plan of distribution. See Chapter 6 (*Disclosure*) for a further discussion of the disclosure included in the offering memorandum. As described below, a preliminary offering memorandum is distributed to investors when the offering is launched (*i.e.*, when the transaction is formally announced, and the initial purchasers begin to approach investors). A pricing supplement is distributed to investors immediately after Pricing. A final offering memorandum that incorporates the information in the pricing supplement into the preliminary offering memorandum should be made available to investors as soon as practicable after Pricing. See Section 3.1.2 (*Pricing Supplement*) and Section 3.4 (*Purchase Agreement*).
3.1.1	**Preliminary Offering Memorandum** At launch, a preliminary version of the offering memorandum (also referred to as the "preliminary offering memorandum", "prelim", "preliminary OM", "red" or "red OM") is made available to the potential investors and is used in the marketing/roadshow process for the offering. The preliminary offering memorandum should include all relevant transaction information other than the information that will follow in the pricing supplement. See Section 3.1.2 (*Pricing Supplement*). If the transaction will be pre-marketed ahead of launch, a draft version of the preliminary offering memorandum (the "pink" or "pink OM") may be used in the confidential pre-marketing discussions. See Section 4.4 (*Pre-Marketing*). Occasionally, a supplement to the preliminary offering memorandum may be issued if a material change to the disclosure is required between launch and Pricing. In this case, Pricing may be delayed to allow investors a period of time to consider the change before making an investment decision.
3.1.2	**Pricing Supplement** The pricing supplement is a short document that memorializes the pricing information (such as the principal amount, coupon, issue price, call schedule, interest payment dates, ISIN/CUSIP, maturity date or rating of the notes) and any other material updates to the information provided in the preliminary offering memorandum, such

	as financial metrics adjusted for the issuance of the notes or covenant changes reflecting investor feedback. The pricing supplement is distributed by the managers to investors that have placed an order for the notes and received an allocation immediately after Pricing. The pricing supplement is typically attached to the purchase agreement as an annex and used by issuer's counsel and managers' counsel to prepare the final offering memorandum by incorporating the information of the pricing supplement into the preliminary offering memorandum. The pricing supplement, when taken together with the preliminary offering memorandum and any supplements thereto, constitutes the "disclosure package" or "time of sale information" referred to in the purchase agreement and the 10b-5 disclosure letters. Investor orders are generally confirmed once the pricing supplement is circulated, usually via Bloomberg.
3.1.3	**Final Offering Memorandum** The final offering memorandum is a revised version of the preliminary offering memorandum, updated to reflect the information included in the pricing supplement. Once completed, the final offering memorandum should be made available, electronically or otherwise, to investors.
3.2	**Roadshow Presentation** Once the offering has launched, the senior management of the issuer and the initial purchasers will market the notes to qualified investors through a series of in-person or virtual meetings called the "roadshow". The roadshow presentation is a series of slides prepared by the issuer, with assistance from the lead managers and/or their advisors, which are used in these meetings to present the issuer's business and emphasize the notes' key credit highlights. The roadshow presentation shall include only (i) information that is included in, or that may be derived from, the information contained in the preliminary offering memorandum and (ii) such other information that is not material to an investor's investment decision, which may include publicly available information.
3.3	**Indenture** The contractual source of the terms and conditions of the notes is called the indenture or, if governed by English law, the trust deed. The indenture is an agreement between the issuer (and guarantor(s), if any), the trustee (who acts as the representative of the noteholders) and other relevant agents (e.g., the paying agent and, in the case of a secured offering, the security agent). It contains the terms of the notes, including, among others, the interest rate, maturity date, redemption provisions, covenants, events of default and the form of the global notes. The terms of the indenture are summarized in the offering memorandum in a "Description of the Notes" section. Indentures and purchase agreements (see below) for high yield notes are typically, although not always, governed by New York law, while other transaction documents may be governed by the laws of different jurisdictions. For example, the indenture and purchase agreement may be governed by New York law, while the intercreditor agreement is typically governed by English law and the security documents by the laws of the local jurisdictions where the relevant collateral is located. See Section 3.7 (*Intercreditor Agreement*) and Section 3.10 (*Security Documents*).

3.4	**Purchase Agreement** The purchase agreement (or, if governed by English law, the "subscription agreement") sets forth the terms, subject to the conditions therein, at which the issuer agrees to sell, and the initial purchasers agree to purchase, the notes. It is the contractual source of the representations, warranties, covenants, conditions precedent and indemnities relating to the note issuance as among the issuer, the guarantors and the initial purchasers. The purchase agreement also includes, as appendices or annexes, the underwriting/economics of each of the initial purchasers, the pricing supplement, the list of documents that were used in connection with the marketing of the notes, and the list of assets and/or rights pledged as collateral. The purchase agreement is signed on the day of Pricing. It is customary and expected in the European high yield market that the purchase agreement is signed by each initial purchaser rather than only by the active (joint) bookrunner(s) or lead left bank acting as representative of the initial purchasers. See Section 3.1 (*Offering Memorandum*), Section 3.1.2 (*Pricing Supplement*) and Section 3.6 (*Agreement Among Initial Purchasers*).
3.5	**Manager Engagement Letter** The initial purchasers will sometimes request, and the issuer may agree, that the issuer executes an "engagement letter" or "mandate letter" with the initial purchasers prior to launch (or launch of pre-marketing, as the case may be).[13] If an engagement letter is executed, it will typically document the role of the initial purchasers (including if, and how many, additional initial purchasers may be appointed) and will cover other matters relating to the engagement, which may include, among other matters: (i) a description of the services to be provided by the initial purchasers, (ii) a description of the fee structure, (iii) an agreement to reimburse the initial purchasers for certain expenses (including costs of legal counsel), (iv) provisions governing the (confidential) exchange of information and (v) an indemnification provision. An engagement letter will typically include both a "transaction indemnity" and a "disclosure indemnity" in favor of the managers. A "transaction indemnity covers all liabilities that arise out of the engagement whereas a "disclosure indemnity" is limited to liabilities that arise out of or are based upon any untrue statement or alleged untrue statement of any material fact, or the omission or alleged omission to state a material fact, in the offering documents. Certain provisions in the Purchase Agreement may replace the corresponding provisions in the engagement letter once the purchase agreement is signed.
3.6	**Agreement Among Initial Purchasers** The agreement among initial purchasers (also known as the "AAIP") governs the obligations and liabilities of the initial purchasers in relation to each other and in respect of their commitments to the issuer in the purchase agreement. See Appendix A for the New York law version of the AFME agreement among initial purchasers. Please note that the AAIP does not function as a power of attorney for the lead representative(s) to execute the purchase agreement or other contractual documents on behalf of the other initial purchasers. While the AFME form AAIP is the agreement most commonly used in the European high yield market to govern the relationship among the initial purchasers, two other

[13] In certain cases, the issuer and the initial purchasers may negotiate a "cost cover & indemnity letter" which regulates the payment of costs and expenses incurred by the managers and provides them with an indemnity before execution of the purchase agreement or in the case the offering will not happen.

	documents are also seen. See Appendix A (*AFME Standard Form - Agreement Among Initial Purchasers*). The Securities Industry and Financial Markets Association form master agreement among underwriters ("MAAU") is often used in U.S. dollar issuances where the billing and delivery bank is a U.S. broker-dealer. In this case, managers' counsel should confirm at an early stage that all of the initial purchasers are party to the billing and delivery bank's MAAU. Any initial purchasers that are not already a party should sign the billing and delivery bank's MAAU prior to Pricing. See Section 5.3 (*Facilitating Communication with U.S. Affiliates*). Alternatively, the International Capital Market Association standard form Agreement Among Managers is sometimes incorporated by reference into the purchase agreement.
3.7	**Intercreditor Agreement** In the event that the issuer (or the group) has a multi-tiered debt capital structure or such a debt capital structure is contemplated or permitted by the terms of the notes, it may be appropriate to utilize an intercreditor agreement, which is an agreement between the main creditors of the issuer (and the guarantor(s), if any), including the trustee as creditor representative of the holders of the subject notes, to facilitate the coexistence of multiple layers of debt. The intercreditor agreement sets out the parties' respective rights and obligations as against each other and is of great practical relevance in a restructuring of the group. The trustee signs the intercreditor agreement on behalf of the noteholders as creditor representative. An intercreditor agreement is typically used in high yield transactions when the notes are secured, in which case a security agent (which may be the trustee or an affiliate of the trustee) will be appointed and also sign the intercreditor agreement. The security agent holds collateral securing any secured notes and other secured obligations on trust for the secured creditors according to the terms of the intercreditor agreement and in accordance with their instructions. The intercreditor agreement establishes, among other things, intercreditor relationship matters such as voting and enforcement rights, requirements for notifications of defaults, the application of proceeds of any debt recovery efforts (including from the sale of collateral in an enforcement scenario), and, to the extent some creditors are subordinated to others, the terms of subordination and other principles to apply between the different creditor classes. The intercreditor agreement should be made available by the issuer and/or the trustee to noteholders upon request. The offering memorandum should include a summary description of the intercreditor agreement and clear instructions on how a copy of the intercreditor agreement can be obtained. Whenever new notes are issued, the trustee, as creditor representative of such "new" noteholders, must accede as a party to the intercreditor agreement.
3.8	**Legal Opinions and Rule 10b-5 Disclosure Letters** Pursuant to the purchase agreement, the managers' counsel and the issuer's counsel will be required to provide certain legal opinions with regard to, including among other matters, (i) due organization of the issuer, (ii) due authorization and execution of the transaction documents, (iii) enforceability of transaction documents[14], (iv) validity of any security, (v) fair summary of certain sections in the offering memorandum and (vi) compliance with applicable securities and other laws,

[14] Please note that typically no opinion is given as to the enforceability of the purchase agreement under New York law.

	including no registration of the notes under the U.S. Securities Act of 1933, no qualification of the indenture under the U.S. Trust Indenture Act of 1939 and that no registration under the U.S. Investment Company Act of 1940 is required. The opinions should also state that the offering does not result in a violation of any laws or agreements by which the issuer is bound and address any relevant tax matters. Similar legal opinions are typically provided by local counsel in each jurisdiction in which the issuer, a guarantor or any security is located. In a European high yield bond offering where the notes are sold into the U.S. under Rule 144A, both managers' counsel and issuer's counsel will be required to provide formal disclosure letters to the initial purchasers at closing. Such letters may be referred to as "negative assurance letters" or "Rule 10b-5 disclosure letters". Rule 10b-5 is the primary anti-fraud provision under the U.S. securities laws and applies equally to registered offerings as well as to offerings not registered with the SEC. Under Rule 10b-5, the initial purchasers, but not the issuer, may assert a defense by evidencing that they performed appropriate due diligence. The purpose of the disclosure letters is to help establish this due diligence defense, complementing other measures such as documentary and oral due diligence and the receipt of comfort letters. Disclosure letters state that, in the course of such counsel's work on the offering and as a result of their own investigations, nothing came to their attention to cause them to believe that the disclosure package or final offering memorandum included any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. This "negative assurance" applies with respect to the disclosure package at the time of first sale and with respect to the final offering memorandum as of its date and as of the closing date.
3.9	**Comfort Letters** The issuer's auditor will provide a "comfort letter" on the day of pricing and a "bring-down" comfort letter at closing. In the comfort letter, the auditor will confirm the audit of the issuer's financial statements included in the offering memorandum. The comfort letter also describes any review procedures performed by the auditor on (i) any interim financial statements included in the offering memorandum, (ii) any internal management accounts and (iii) the "stub" period following the end date of the latest audited or reviewed financial statements or management accounts and a date several days (usually 2 to 3 business days) prior to the date of the final offering memorandum (such date being the "cut-off" date). The auditors will also describe any additional "agreed upon procedures" they have conducted with regard to the issuer's financial information included in the offering memorandum. In transactions in which offers are made both inside and outside of the United States, the usual practice in Europe is for the auditor to issue two separate (but nearly identical) comfort letters: one with respect to the U.S. offering and the other with respect to the non-U.S. offering. The auditor typically issues the comfort letter provided in connection with the non-U.S. offering in accordance with the terms of an auditor engagement letter among the auditor, the issuer and the initial purchasers. In transactions in which SAS 72/AU 634 form comfort letters are issued, the auditor will also provide "negative assurance". This means the auditor will affirm the absence of any material changes to certain specified financial line items since the date of the most recent financial statements included in the offering memorandum up until the cut-off date, except as specified in the comfort letter. In conformity with U.S. practice, where a comfort letter is issued in connection with a U.S. offering, negative assurance will not be given as of a date that is 135 or more days after the end of the most recent period for which the auditor has performed an audit or review. Audit firms

	in some jurisdictions also will not provide negative assurance with respect to a non-US offering if this "135-day rule" is not satisfied. At closing of the offering, the auditors will typically provide a "bring-down" comfort letter, which will reaffirm, as of a cut-off date (usually 2 to 3 business days prior to the closing date), that the statements made in the original comfort letter are still valid and include bring-down procedures up to the cut-off date. The comfort letters will normally follow a standard format prescribed by the relevant accounting body, subject to any adjustments that may be negotiated. See Section 2.3 (*Auditors*). In connection with this process, the auditor will typically review the relevant financial statements and management accounting books and records, and provide tick marks (e.g., "A", "B", "C") next to financial numbers that appear in the offering memorandum. Each tick mark represents a negotiated procedure designed to demonstrate how the given number was verified by the auditors as part of the comfort process. The managers' counsel will agree with the issuer's auditors a "circle up", placing a circle around each number in the offering memorandum for which a tick mark is requested. Alternatively, the issuer's auditors (rather than the managers' counsel) will prepare the first draft of the circle up, along with tick marks, for the managers' counsel's review and comment.
3.10	**Security Documents** In the case of a secured notes offering, each entity providing a lien on assets to secure the debt obligations will execute its respective security documents, typically governed by the law of the jurisdiction in which the relevant collateral is located, within the time frame specified under the purchase agreement and disclosed in the disclosure documents. If an intercreditor agreement is already in place or being entered into in the course of the offering, the security agent holds security over the relevant assets on behalf of the noteholders and any other secured creditors.
3.11	**Due Diligence Documentation** The appropriate level of due diligence to be performed in a high yield offering will depend on the nature of the transaction, the jurisdictions into which the notes will be marketed and sold, and the policies and procedures of the relevant parties. There are no statutory guidelines regarding the conduct of a due diligence investigation. The due diligence exercise may vary from transaction to transaction and the procedures are determined on a case-by-case basis. The initial purchasers will discuss with senior management the issuer's business and prospects, and review the issuer's financials and business plan and they may also visit certain of the issuer's key sites in some cases.[15]
3.11.1	**Due Diligence Request List** At the commencement of the transaction, managers' counsel will prepare a list of documents that they would expect to review as part of the due diligence process. The nature of any due diligence request list will depend on the particular circumstances of the transaction and the expectations of the parties. It will cover a broad range of documents that could reasonably be considered material in the context of a notes offering. The board minutes of the issuer and the guarantors for the financial periods described in the offering memorandum (typically three full fiscal years, if applicable,

[15] Please note that banks acting as placement agent do not act as initial purchasers and typically do not conduct documentary due diligence, however, certain other due diligence procedures may be required/requested for KYC purposes or if special circumstances require. See See Section 2.5.6 (*Placement Agent*).

	and minutes for any other periods up to the cut-off date) are particularly critical, as the review of minutes is specifically prescribed under U.S. case law as an important part of the due diligence process and the minutes would normally describe any transactions or decisions that the issuer and guarantors consider significant. Other examples of significant documents include constitutional documents, material agreements (including commercial contracts and financing agreements), licenses to operate, and documents relating to litigation, regulation, sanctions, investigations or other government action. Depending on the issuer and its industry, documents relating to real estate, intellectual property, labor matters, environmental compliance or other specific areas may be significant as well. In response to the due diligence request list, the issuer, with the help of issuer's counsel, will prepare a virtual/electronic data room containing the requested documents. Both counsels will review the documents in the data room and make follow-up requests for additional documents or clarifications, and will amend and supplement the disclosure based on this review.
3.11.2	**Management Due Diligence Questions** The managers, in coordination with their counsel, will also prepare a list of questions covering relevant aspects of the issuer's business to which senior management of the issuer will respond in the course of a "management due diligence" call, and subsequent calls ahead of pre-marketing (if applicable), launch, pricing and closing to "bring-down" the questions and answers from the management due diligence call. Initial due diligence calls typically include a separate ESG section, particularly in the case of a GSS+[16] bond. See Annex A of "AFME Recommended ESG Disclosure and Diligence Practices for the European High Yield Market" for an illustrative list of sample questions for ESG due diligence.
3.11.3	**Director and Officer Questionnaires** Additionally, as part of the due diligence process, the directors and senior officers of the issuer (practically speaking, anyone who is listed in the "Management" section of the offering memorandum) will also provide counsel with information regarding each director's or officer's background and experience, independence, compensation, purchase of the issuer's or any of the group companies' securities, affiliate transactions and any other potential conflicts of interest. This information may be provided in the form of a signed questionnaire (referred to as a "D&O questionnaire").
3.11.4	**Back-up Verification Process** Moreover, as an additional aspect of the due diligence process, managers' counsel will prepare a so-called "back-up" verification list that is used to ensure factual information in the offering memorandum that is not covered by the auditors' circle-up (e.g., operational or industry data) is supported by documentation. In limited cases where important financial metrics cannot be circled by the auditors, a so-called "CFO Certificate" in which the CFO performs procedures on those metrics may be considered to be delivered to the managers.

[16] "GSS+" refers to green bonds, social bonds, sustainability bonds, sustainability-linked bonds or any other sustainable finance bonds.

3.12	**Press Releases** In connection with the launch and pricing of the offering, and sometimes at closing depending on the circumstances, the issuer usually issues a press release to inform the market of the transaction These press releases may be required to comply with MAR. Issuers may want to consider preparing their press releases in accordance with Rule 135c of the U.S. Securities Act of 1933, which provides for a safe harbor for companies subject to the reporting requirements of the U.S. Securities Exchange Act of 1934 and certain non-reporting foreign private issuers when issuing a press release about a proposed or completed unregistered offering. Such press releases do not constitute "general solicitation" or "directed selling efforts" under the U.S. securities laws when prepared in accordance with Rule 135c. Press releases that do not fall within the scope of Rule 135c should be prepared in accordance with Rule 135e and include the corresponding legends.
3.13	**Second Party Opinion - SPO** Issuers of sustainable finance bonds that have a sustainable finance framework typically obtain a pre-issuance "second party opinion" (the "SPO") from an external reviewer that confirms the alignment of the bond and/or a sustainable finance framework with international standards and best practice (e.g., the core components of the ICMA "Green Bond Principles"). The sustainable finance framework and SPO are usually published on a non-reliance basis on the issuer's website on or prior to public launch of the offering. However, neither document is included in the offering memorandum, although a summary of the framework may be provided. Industry guidelines recommend (or in certain instances require) post-issuance review/verification of compliance with such guidelines by a third-party reviewer (but not the initial purchasers).
3.14	**Reliance and Consent Letters** Reliance and consent letters are issued by experts and consultants retained in certain transactions. Reliance letters are typically issued by experts, such as mining and other experts and accounting firms, and give the recipients the right to rely on the expert's work product, sometimes subject to liability caps and other limitations. Consent letters give the recipients the right to reproduce the expert's or consultant's work product in the offering memorandum.
3.15	**Note Regarding Comments to Documentation** Each of the relevant parties should receive drafts of any document it will sign or sign-off on for review and comment, including those documents listed as conditions precedent to closing in the purchase agreement, as early as practicable and with reasonable[17] time for such parties to review the document, confer with the relevant advisors and provide comments. The name of a manager making a particular comment on the documentation should not be disclosed to the issuer or the issuer's counsel without the relevant manager's prior consent.

[17] Reasonable timing should be assessed on a case-by-case basis, as what is reasonable on one transaction may not be reasonable in another (depending on the complexity of the structure and documentation, etc.). Initial Purchasers also need to establish an adequate due diligence defense and time may be required to conclude their reasonable investigations.

CHAPTER 4: PRE-TRANSACTION COMMUNICATION PROCEDURES

Publicity prior to, during or after an offering of securities can have negative (including significant legal) consequences if not prepared and disseminated in compliance with appliable laws, regulations and market practice. All publicity, contact with the public (including investors, the press and securities analysts) and other public communications should be reviewed before dissemination. Issuer's counsel may prepare "publicity guidelines" to help the issuer navigate the rules and practices around communications in the context of a securities offering. Confidentiality agreements may also be used to prevent sensitive information from becoming public. This chapter provides an overview of typical outside communications ahead of the public launch of a notes offering.

4.1	**Publicity** Certain jurisdictions, including the United States, impose various restrictions on publicity and the release of information generally in connection with proposed offerings of securities. Failure to observe these publicity restrictions may constitute violations of securities laws, resulting in offering memorandum publication, registration or similar requirements that may have an adverse effect on the offering, including by way of delays related to a "cooling-off period" that may be imposed after improper publicity under the U.S. securities laws. Therefore, best practice is for issuer's counsel to prepare "publicity guidelines" early in the preparatory stage of the transaction, which should be reviewed by managers' counsel and observed by all offering participants. In addition, one representative of the issuer should be appointed to serve as the initial point of contact with the press and securities analysts, and to manage any publicity and other broad-based communications during the offering process in order to ensure compliance with the restrictions set out in the publicity guidelines. All representatives of the issuer and other offering participants who are likely to be approached by, or come in contact with, the press or securities analysts should be made familiar with the publicity guidelines and should ensure that no publicity is undertaken or permitted except in accordance with the publicity guidelines.
4.2	**Pre-Investment Investor Meetings**[18] In order to ensure that the relevant investor community is familiar with its business, an issuer may wish to hold a series of meetings with investors that, unlike transaction-specific or "deal" roadshows, are not intended to market a specific immediate transaction nor to gauge investor interest or feedback on a particular transaction. Such a series of meetings are commonly referred to as a "non-deal roadshow" or "credit update". The issuer should not discuss the terms of a potential transaction nor communicate any material non-public or inside information concerning its business in such update meetings; rather, it should focus on discussing published financials and any other publicly available information. The issuer should consider consulting with its external legal counsel prior to undertaking any such meetings, particularly if planned in close proximity to an offering, as a cooling-off period may be required if specific requirements are not met. It is also important that competing investors do not exchange any non-public commercially sensitive information at such meetings (for example, in relation to recent transactions or business strategies).

[18] A cooling-off period typically is not required if the meeting announcement states that a securities offering may follow subject to market conditions, so long as meeting participants receive only such information regarding the potential offering as is included in the announcement.

4.3	**Market Abuse Regulation** MAR applies to: 1. Financial instruments admitted to trading on a UK or EU regulated market (which does not apply to most high yield bonds), or for which a request for admission to trading on a UK or EU regulated market has been made; 2. Financial instruments traded on a UK or EU MTF (including the Luxembourg Stock Exchange Euro MTF and Euronext Dublin Global Exchange Market) or organized trading facility ("OTF"). MAR does not apply to securities outside 1. that are listed on markets that are outside of the EEA or do not involve an admission to trading (*i.e.*, The International Securities Exchange and the Luxembourg Stock Exchange Securities Official List); and 3. Financial instruments not covered by 1 and 2 above, the price or value of which depends on, or has an effect on, the price or value of a financial instrument referred to in 1 and 2. Readers can refer to the Financial Instruments Reference Data System ("FIRDS") to check if a financial instrument is covered by 1 or 2 above. FIRDS is a reference data architecture developed by ESMA and national competent authorities which records all instruments reported by EU trading venues as being traded on them[19]. As part of the UK's Brexit withdrawal process, the FCA has developed an alternative system called FCA FIRDS[20]. MAR's implications for high yield offerings include: • prompt disclosure of "inside information" (defined as information of a precise nature which has not been made public relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instrument or on the price of related derivate financial instruments); and • pre-marketing conducted on a wall-crossed basis for transactions that may affect the price of an existing MAR-affected security. In this case, certain recordkeeping requirements must be satisfied and potential investors must undertake not to trade relevant MAR-effected securities until they are "cleansed" through the release of the pertinent inside information to the public, often via press release or regulatory filing. For issuers with no existing securities listed in the EU or UK, MAR applies once a request for admission to trading has been made with an MTF, OTF or regulated market located in the EU or UK. Securities listed on exchanges outside of the EU or UK are not subject to MAR unless those securities are also listed, of influence the price of securities listed, for trading on an MTF, OTF or regulated market located in the EU or UK.
4.4	**Pre-Marketing** Lead managers may sometimes seek initial feedback from a small number of investors, representative of the issuer's targeted investor base, to help assess the general receptivity and expected depth of demand for a particular credit and transaction structure, and to formulate appropriate initial price guidance ahead of a transaction announcement ("pre-marketing"). Pre-marketing meetings are typically conducted on a confidential basis

[19] Please see ESMA FIRDS register here: https://registers.esma.europa.eu/publication/searchRegister?core=esma_registers_firds.

[20] Please see FCA FIRDS here: https://data.fca.org.uk/#/viewdata.

	under the terms of appropriate non-disclosure agreements and should be undertaken with the prior knowledge and consent of the issuer. In any case, all pre-marketing activities must be conducted in compliance with the relevant provisions of MAR, for issuers that are subject to MAR, and otherwise in accordance with appropriate wall-crossing procedures as described below.
4.4.1	**Pre-Marketing Information Disclosure** In many cases, specific information that may be considered confidential, or that may potentially amount to "inside information", might need to be disclosed to such investors during pre-marketing. In such cases, the lead manager(s) carrying out the pre-marketing will establish, together with the issuer, the extent to which information proposed to be disclosed constitutes inside information and whether and how such information should be disclosed. The lead managers (and other disclosing market participants) will carry out such disclosure in line with applicable securities and other laws, including any applicable provisions of MAR. If the parties decide to disclose any "inside information", they will inform such investors that they could, due to the receipt of such information, be subject to restrictions under laws and regulations applicable to the possession of such information (including restrictions on trading in related securities) – *i.e.*, indicating that the investor is to be "wall-crossed". Under MAR, records of any such interaction where "inside information" is conveyed must be kept (e.g., of the persons who have been pre-marketed, of the time of the pre-marketing and of the information disclosed) and insider lists must be updated. See Section 4.3 (*Market Abuse Regulation*). The practice of wall-crossing is limited by investors' ability and willingness to be approached in this way, to provide meaningful feedback and to potentially be restricted from trading the relevant securities. The interpretation of what constitutes inside information in connection with pre-marketing activities may differ. Investors should consult their own compliance functions and advisors as to the potential status of the information and the potential scope and duration of the restrictions to which such investor may be subject.
4.4.2	**Recommendations** Prior to any pre-marketing, there should be a discussion, with the knowledge and consent of the issuer, among the lead managers as to: • what information is proposed to be disclosed in the course of such pre-marketing; • whether such information constitutes 'inside information' under applicable market abuse rules; and • what procedures will be applied in managing the disclosure of such information (including as to any wall crossing and potential subsequent 'cleansing' strategy) to ensure compliance with such rules. Investors should have a nominated first-instance contact for the purposes of receiving pre-marketing information. Lead banks should have policies in place relating to the selection of investors chosen to participate in market soundings. The policy should include the rationale for which and how many investors are chosen for the process. The following factors should be considered in making this decision: • the views of the issuer;

	• the nature and manner of the investor's participation in similar processes; • the level of engagement by the investor in the issuer, or in the issuer's sector, or in past offerings by the issuer; and • eligibility of investors to participate (e.g., due to deal documentation or selling restrictions). These policies may form part of, or be distinct from, a lead manager's allocation policy.

CHAPTER 5: COMMUNICATION WITH INITIAL PURCHASERS

5.1	**Initial Syndicate Communication Prior to Transaction Announcement** Prospective initial purchasers should be notified of at least the following basic terms of the offering when, with the consent of the issuer, they are approached to be brought into the syndicate. This must occur prior to their names being publicly associated with the transaction and prior to Pricing: • the names of the issuer and any guarantors; • any security granted in connection with the offering; • the currency, expected maturity, interest basis, minimum denomination and ranking of the notes; • the invited party's proposed role, initial purchaser allocations and fees; • any relevant selling or distribution restrictions (e.g., restrictions on sales into the U.S. or to retail investors); • if the notes to be offered will not include a gross-up; and • any substantial deviation from accepted market practices. A prospective initial purchaser should not be publicly named in relation to a transaction unless: • it has communicated its acceptance to join the syndicate for that transaction; and • it has received, reviewed and provided sign-off on drafts of the preliminary offering memorandum and relevant transaction documents.
5.2	**Minimum Initial Purchaser Commitments** Given the complex nature of a typical high yield offering, no initial purchaser should be named in an offering document if it has a commitment below the de minimis denomination.
5.3	**Facilitating Communication with U.S. Affiliates** Where a U.S. broker-dealer is a lead manager of a European high yield bond offering, other managers should, upon request, be provided with the details of the relevant U.S. affiliate contacts. In addition, managers' counsel should consider what form the agreement among the initial purchasers will take in this case. See Section 3.6 (*Agreement Among Initial Purchasers*).
5.4	**Information Provision to and Consultation with ICSDs** A draft offering memorandum and related term sheet (quoting any allocated securities codes and note title) should be sent as early as possible during the preparatory phase of the transaction (and within one business day following any changes) to the relevant clearing system(s). This is done, among other reasons, in order to obtain the relevant ISIN(s) for the securities. Any requirement for paying agent or ICSD actions/procedures should be discussed and agreed with that entity as early as possible during the documentation of the transaction, unless they have been agreed and operated by that entity in a previous transaction.

CHAPTER 6: DISCLOSURE

6.1	**Introduction** The information below reflects European market practice for disclosure in a typical transaction conducted under Rule 144A, which would largely track the disclosure for an SEC-registered offering. The offering memorandum is a disclosure document intended to provide potential investors with material information necessary to enable them to make an informed investment decision with respect to the notes. The issuer is responsible for the accuracy and completeness of the information included in any offering memorandum, although other parties involved in the transaction may be responsible for specific information they provided about themselves for inclusion in the offering memorandum. The main sections of an offering memorandum for a European high yield transaction are described in the following sections of this chapter.[21]
6.2	**Summary Box** The summary box briefly summarizes the more detailed information included elsewhere in the offering memorandum, including a description of the transaction, a description of the issuer and its business strengths and strategies, a summary of the principal terms of the notes, summary financial and other information, and material recent developments.
6.3	**Risk Factors** Risk factors list and explain certain risks related to the notes and the transaction. This section will also include other relevant risks, which will vary depending on many factors, including, among other things, the issuer's business and industry, the macroeconomic and geo-political environment, and the general deal structure.
6.4	**Pro-forma and other Financial Data** If the issuer or the group has undertaken a significant acquisition or disposition or such acquisition or disposition is probable, the issuer may be required to prepare pro forma financial information (with the assistance of its auditors) and, in the case of a significant acquisition, obtain stand-alone historical financial statements of the relevant target entity, both for inclusion in the offering memorandum. The pro forma financial information would recast the issuer's financial statements "as if" the relevant transaction or other state of affairs had occurred at the beginning of the period presented (in the case of income statement data) or as of the last balance sheet date (for balance sheet data). The analysis of whether such pro forma financial information for the issuer and stand-alone historical financial statements of the target are necessary requires the involvement of the issuer, counsel and the initial purchasers. This process can have an impact on timing and therefore should be considered as early in the process as possible. The offering memorandum may also include certain alternative performance measures (APMs) and non-U.S. GAAP or non-IFRS financial data, which will be prepared by the issuer with the assistance of its auditors. See Section 2.3 (*Auditors*).

[21] The contents of the offering memorandum will also be informed by, *inter alia*, (i) the disclosure requirements for annual reports of foreign issuers that may be filed with the SEC on its Form 20-F, (ii) facts specific to the issuer, (iii) market practices and (iv) the specific expectations of the initial purchasers as to the appropriate disclosure for the transaction.

6.5	**Management's Discussion and Analysis** Management's discussion and analysis of the issuer's or the group's[22] financial condition and results of operations, or "MD&A," provides management's insight into, and analysis of, the issuer's financial performance and position, including not only the issuer's historical financial performance but also key factors that have affected the issuer's historical financial performance and trends expected to affect future performance (noting, however, that forecasts and projections are generally not included in offering memoranda). This section includes a period-by-period analysis of the issuer's operating results. This analysis will typically describe each significant line item in the issuer's, parent guarantor's and/or target's financial statements and compare that line item for the applicable period to comparable information for other periods, and will also explain why they have changed. Cash flows, sources of liquidity, capital expenditures and contractual commitments, as well as risks affecting the issuer, are typically also discussed and analyzed.
6.6	**Business** The business section describes the issuer's or the group's operations. The format for this section will vary depending on the circumstances but will typically include a brief description of the issuer followed by a description of the issuer's business strengths and strategies. After this introductory information, the issuer will include descriptions of its products and services, the competitive landscape, information technology capabilities, production facilities, ESG matters and various other aspects of its business (including ESG policies). This section will also often include a discussion of the industry in which the issuer operates (although some offering documents may include a standalone industry section).
6.7	**Management; Related Party Transactions** The management and related party transactions sections include descriptions of the issuer's, parent guarantor's and/or target's directors and officers, how they are compensated. This section will also typically include a description of any business relationships between the issuer or group and the officers, directors and principal stockholders.
6.8	**Description of Certain Other Financing Arrangements** The offering memorandum will generally include a description of the material provisions of the group's other financing arrangements, which includes a description of the issuer's senior credit facilities, any other indebtedness or preferred stock that would be relevant to a credit decision, as well as a description of the intercreditor agreement (if any).
6.9	**Description of Notes** The description of notes provides a detailed summary of the key mechanics of the indenture and includes an almost word-for-word version of the note covenants included in the indenture.

[22] In the following sections, references to the "group" also includes any parent guarantor or target.

6.10	**Use of Proceeds** The use of proceeds section sets forth the proposed use or uses of the proceeds of the offering. If the offering is part of a broader transaction, the source of funds and uses of those funds is typically also described, often in the form of a table
6.11	**Capitalization Table** The capitalization table presents the historical financial indebtedness and equity of the issuer as well as an "as adjusted" or "pro forma" column showing the impact of the offering, the use of proceeds therefrom and any other related or recent transactions (e.g., repayment of indebtedness, granting of shareholder loans) on the issuer's balance sheet as of a certain balance sheet date, which is usually the most recent balance sheet included in the offering memorandum.
6.12	**Plan of Distribution** This section describes the relationship between the managers and the issuer in connection with the offering and how the securities are being offered and how the managers intend to distribute the securities, including information on stabilization and market making. Selling restrictions for the various jurisdictions are often repeated in this section, as applicable.
6.13	**Other Information** The offering memorandum will also contain a number of other sections, such as a cautionary statement relating to forward looking statements, selected financial data, book-entry mechanics, plan of distribution, tax information, selling and transfer restrictions, information relating to the listing of the notes, if any, and certain local law considerations.
6.14	**ESG Considerations** Disclosure of ESG matters depends on the circumstances of the issuer and other stakeholders (e.g., financial sponsor/shareholders) and on the nature of the high yield bond being issued. Issuers should, for example, reflect any material ESG-related risks in the risk factors, provide an overview of their ESG policies, and consider the impact of ESG-related issues on the use of proceeds, business, MD&A and description of notes sections, and should expand disclosure as appropriate.[23] Issuers of GSS+ bonds should provide clear, transparent disclosure of relevant information that would be material to an investment decision. Typical risks in GSS+ bonds include, but are not limited to, (i) the suitability of the instrument for investors seeking exposure to ESG assets, (ii) ambiguous terminologies and definitions for "green"/"sustainable"/"social"/"transition" and "sustainability-linked" bonds, (iii) the instrument's potential lack of compliance with future taxonomies, labels or standards, (iv) failure to use the proceeds in accordance with the use of proceeds, or non-compliance with sustainability performance targets ("SPTs"), will not constitute an event of default, (v) variability in green/sustainable/social bond reporting, or (vi) SPOs not being legally actionable. The bond characteristics (e.g. yield) of a sustainability-linked bond ("SLB") can vary depending on compliance with key performance indicators ("KPIs") and SPTs. To the extent there is to be any discretion in the calculation of KPIs, or the potential for an issuer

[23] The extent of ESG-related disclosure depends on several factors, such as the nature of the issuer's business, and should therefore be agreed amongst the issuer, managers and legal counsel at an early stage.

	to recalculate an SPT and/or the corresponding baseline prior to maturity (e.g., in case of a "significant" corporate reorganization (such as acquisitions or dispositions) or changes in calculation methodology of the respective KPI), it is best practice and may be required by disclosure standards, depending on the circumstances, that the legal documentation should explicitly provide for this. Issuers are recommended to follow guidance and best practices published by international organizations such as the International Capital Markets Association (ICMA). For a more detailed discussion about ESG Disclosure for the European HY market, see "AFME Recommended ESG Disclosure and Diligence Practices for the European High Yield Market".

CHAPTER 7: TRANSACTION LAUNCH AND BOOKBUILDING

Once the transaction documents have been finalized and market conditions are favorable for the contemplated notes offering, the issuer can "launch" the transaction, *i.e.*, starting the process of finding potential buyers ("accounts") for the notes being offered. The launch is typically publicly announced via a Bloomberg release to institutional investors and also may be accompanied by a press release from the issuer, particularly if required under MAR or other applicable law. After the launch of the transaction, the lead managers and issuer's management start the so called "roadshow". The roadshow is a series of physical or virtual meetings with potential investors who have been provided with the preliminary offering memorandum and the roadshow presentation and during which management presents the issuer and its business and answers any questions from potential investors. On the proposed date of Pricing, a public announcement via a Bloomberg will be made to institutional investors with an indicative pricing range and investors will put in their bids for the notes. The systematic process of generating, capturing, and recording investor demand for notes is known as "bookbuilding".

Based on the principle of demand (interested accounts) and supply (proposed offering size), a cut off price is reached, which is generally the coupon (or a combination of a discounted issue price and coupon) at which investors are willing to buy the notes being offered. In case of oversubscription, notes are typically pro-rated. See Chapter 8 (*Order Book Management*).

7.1	**Roadshow Participation** Lead managers should have policies in place relating to the selection of investors for participation in roadshows. The policy should include the rationale for which and how many investors are chosen. The following factors, among others, may be relevant in making this decision: • the views and preferences of the issuer; • the nature and manner of the investor's participation in similar processes; • whether the investor has expressed interest in the issuer; • the level of engagement by the investor in the issuer, or in the issuer's sector, or in past offerings by the issuer; and • eligibility of investors to participate (e.g., due to deal documentation or selling restrictions).
7.2	**Order Book Disclosure** Article 12 of MAR includes a requirement to ensure that any suspicious transactions and orders are reported to the regulatory authorities accordingly. MAR prohibits behavior that is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for, or price or value of qualifying investments. Accuracy of order book updates, where provided, must therefore be clear, fair and not misleading. Recommendations: • lead managers should consider agreeing to a strategy for book disclosure/frequency of updates with the issuer before opening the order book; • any disclosure that the parties agree to make in accordance with their policies and communications procedures should be made public and should not be misleading at the time that it is made; • in order to allow investors time to collate their demand, no significant changes to indicative issue terms, including pricing and expected range of issue size, nor

	publicity of the order book size, should be made during the last 15 minutes of the bookbuilding. See Section 8.3 (*Changes to the Order Book*); and[24] • giving no book size updates is an acceptable alternative. There should be no selective disclosure, and any disclosure that is given should be made in a public manner. Any transaction communication, including transaction announcements, roadshow scheduling, pricing indications, transaction updates, Pricing, and free to trade timing should be distributed by the lead manager(s) to the other managers without delay.
7.3	**Intermediate Discovery – "Initial Price Talk"** Following the public announcement of a transaction, initial purchasers may implement an intermediate price discovery step, which involves public dissemination of more tentative price indications, on which initial purchasers then actively seek feedback. Such indications need to be clearly distinguished from formal price guidance because, unlike formal price guidance, they may involve several successive iterations that may widen as well as tighten. The designation generally used is "initial price talk" or "IPTs", though designations like "price discovery", "initial price thoughts" and "price level under discussion" are also sometimes used. Selective verbal disclosure regarding price ("price whispers") should be avoided as it would likely not be available to all market participants. Under the laws of some countries such information may be regarded as being confidential and its disclosure may only be made with the prior consent of the concerned party.
7.4	**Allocation Priorities of Issuers** Specific issuer allocation interests or priorities (or related broad guidelines), if any, should be discussed with the issuer and considered at the earliest opportunity, and at least prior to draft allocations being presented to the issuer. See Chapter 8 (*Order Book Management*).
7.5	**MAR STOR Regime** Under Article 16 of MAR, market operators and investment firms that professionally arrange and execute transactions are required to submit suspicious transaction and order reports ("STOR") if they reasonably suspect that a transaction or an order may constitute actual or attempted market abuse.
7.6	**U.S./non-U.S. Differences in Global Offers** Where significant U.S. distribution is expected, there should be early determination as to whether standard international offer/execution/distribution procedures need to be varied. This is because U.S. market practice may differ from that customarily applicable to international offers outside the U.S. Such differences may include, for example, DTC-specific closing arrangements, which differ from ICSD closing arrangements, or the use of a MAAU rather than an AAIP to document the relationship among the initial purchasers.

[24] If a significant change to the issue terms other than the expected range of issue size has to be made in the last 15 minutes, the clock should be reset and the book remain open for another 15 minutes after the change has been communicated to all relevant parties.

CHAPTER 8: ORDER BOOK MANAGEMENT

Market manipulation consists of activities and behaviors that may disrupt or negatively impact financial markets. Market manipulation may involve entering into a transaction, placing an order, disseminating information or engaging in any other behavior that: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of a financial instrument; or (ii) secures, or is likely to secure, the price of one or several financial instruments at an abnormal or artificial level. MAR requires the adoption and implementation of procedures, practices and controls that prevent and detect market manipulation.

8.1	**MiFID II / MiFIR** MiFID II comprises the Markets in Financial Instruments Directive (2014/65/EU) and the Markets in Financial Instruments Regulation (600/2014) and regulates financial services in the European Union (which has been on-shored in the UK as part of the Brexit process). Under Article 40(4) of the MiFID Delegated Regulation, underwriters must establish, implement and maintain an allocation policy that sets out the process for making allocation recommendations. Article 40(5) requires managers to involve the issuer in discussions about the placing process in order to take into account the issuer's interests and objectives and requires the managers to obtain the issuer's agreement to its proposed allocation for the transaction. Article 43 requires managers to keep records of the content and timing of instructions received from the issuer. In particular, the final allocation that is made must be clearly justified and recorded (and the complete audit trail must be made available to competent authorities upon request).[25]
8.2	**Allocation** All allocation policies and practices should conform to the requirements of MiFID II.[26] Examples of factors that may be taken into account during the allocation process include, but are not limited to: • the current holdings (and past dealings) of an investor in other notes of the issuer; • the investor's familiarity with the issuer's sector and/or the investor's holdings in comparable issues;

[25] The guidance at Answer 3 on page 58 of the *ESMA Q&A on MiFID II and MiFIR investor protection and intermediaries topics* of 19 November 2021 (the "ESMA Guidance") specifies that records of allocation decisions should include:

(a) The firm's overarching allocation policy under Article 40(4) in force at the time of the commencement of the service;
(b) The firm's initial discussion with the issuer client and the agreed proposed allocation per type of investment client, as required by Article 40(5);
(c) The content and timing of allocation requests received from each investment client with an indication of their type;
(d) Where relevant, any further discussion and instructions or preferences provided by the issuer client, other members of the syndicate, or the firm itself, on the allocation process, including any emerging in light of allocation requests received from investment clients;
(e) The final allocations registered in each individual investment client's account.

The ESMA Guidance goes on to say firms must provide a justification for the final allocation made to each investment client. For this purpose, a justification should explicitly provide detailed reasoning unless such detail has been provided through records maintained at stages (a-e) above.

[26] See Articles 16(3), 23 and 24 of the *MiFID II Directive (2014/65/EU)*,Articles 38 to 43 of the *MiFID II Delegated Regulation* and section 6 of the ESMA Guidance.

	• if applicable, the investor's involvement in roadshow or other marketing and the investor's response to the issue during that phase of the process; • the point during the marketing of the notes when the investor submits an order; • the size and nature of the investor's assets under management (and also the size of assets under management relative to the size of the order placed); • the geographical location of an investor and applicable selling restrictions; and • ensuring an appropriate mix of investors to allow for an effective aftermarket in the securities. Additionally, records should be kept of the content and timing of instructions received from clients, as well as a record of the allocation decisions taken and a justification of the final allocations that are made.[27] This is to ensure a complete audit trail of the material steps in the underwriting and placing process is recorded and can be made available to competent authorities upon request.
8.3	**Changes to the Order Book** No significant changes to indicative issue terms, including Pricing and expected range of issue size, nor publicity of the order book size, should be made during the last 15 minutes of the bookbuilding. If a significant change to the issue terms other than the expected range of issue size has to be made in the last 15 minutes, the clock should be reset and the book should remain open for another 15 minutes after the change has been communicated to all relevant parties.
8.4	**Distribution Disclosure** Giving no disclosure of the status of the order book or distributions to managers is an acceptable course of action. However, if any disclosure of the status of the order book or distributions is made: • it should be agreed by the (joint) lead manager(s) in advance of being made; • it should be widely disseminated to investors, even if not required under applicable law or regulation; and • it is required by law to be clear, fair and not misleading and issuers and managers should focus on ensuring any disclosure is representative of investor demand.
8.5	**Access to Distribution** The lead manager(s) are encouraged to share the final allocation for the transaction with the other (passive) managers on the transaction as soon as possible. In any event they should do so as soon as practicable (at least within 24 hours) following the Pricing of the transaction. The lead manager(s) should also give access to the final allocation for the transaction to any other initial purchaser without responsibility for actively running the order book. The final allocation information for the transaction should not obscure the names of the relevant investors, unless the initial purchasers receiving the order have been expressly

[27] See footnote 26 above.

	directed to exclude such name(s) by the relevant investor(s) or are required to do so by applicable laws or regulation.

CHAPTER 9: PRICING

Once the initial purchasers have completed the marketing of the notes, the bookbuilding and determined the final price, principal amount, interest rate and maturity date of the notes, a pricing call will be held during which the issuer decides whether to accept the terms offered by the initial purchasers. This process is commonly referred to as "Pricing". If the issuer accepts the pricing terms, the purchase agreement is signed and the pricing supplement is circulated. The time of acceptance of the pricing terms by the issuer and the initial purchasers is referred to as the "time of first sale" or "applicable time". Alternatively, if the issuer finds the pricing terms unacceptable, it can choose whether to continue approaching investors in an effort to achieve better terms or cancel the notes offering. In practice, however, a pricing call will only be held once the issuer will accept the terms.

9.1	**Pricing/Free to Trade /Pricing Supplement** All members of the syndicate should be given some notice (even if very short) of when the new issue has priced and will be free to trade (subject to the issuance of the notes). In no event should such notice or information be provided to such parties later than the time that it is provided (or otherwise made known) to the investor community. The notes should not be made free to trade until after the purchase agreement is agreed[28] and the final pricing supplement has been distributed to the initial purchasers investors. All members of the syndicate should be informed: • as soon as practically possible, as to when and on what reference basis the issue will be priced; • promptly, as to any change to the above; and • immediately, as to Pricing itself.
9.2	**Delivery of Comfort Letters** Comfort letters and circle-ups in agreed form should be negotiated with the issuer's auditor(s) (and any guarantor's or target's auditor) well in advance of Pricing. The auditors may wish to see the executed purchase agreement, with the pricing supplement attached as an annex, prior to delivering the executed comfort letters to the initial purchasers. The executed comfort letters should be dated the date of Pricing and addressed to the initial purchasers (and the issuer's board of directors). A "bring-down" comfort letter (covering the period subsequent to the cut-off date set forth in the original comfort letter) will be delivered at closing. See Section 3.9 (*Comfort Letters*).
9.3	**Pricing Deliverables and Distribution Thereof** On the pricing date, in addition to the preparation and distribution of the pricing supplement described in Section 3.1.2 (*Pricing Supplement*): • the signature pages to the purchase agreement (see Section 3.4 (*Purchase Agreement*)) are released by the initial purchasers, the issuer and the guarantors (if any); • the signature pages to the agreement among initial purchasers (see Section 3.6 (*Agreement Among Initial Purchasers*)) are released by the initial purchasers; and

[28] The fully compiled and signed purchase agreement, incorporating the pricing information and attaching the final pricing supplement, is typically circulated by managers' counsel after Pricing and after the notes are made free to trade.

	• the comfort letter is delivered by the auditors (see Section 9.2 (*Delivery of Comfort Letters*)). All initial purchasers should receive, as soon as available after pricing, electronic copies of the following, all dated as of the pricing date: (a) the pricing supplement; (b) the executed purchase agreement; (c) the executed agreement among initial purchasers; and (d) the executed comfort letter. The final offering memorandum, which incorporates into the preliminary offering memorandum the final offering terms contained in the pricing supplement, should be received by the initial purchasers as soon as practicable after Pricing. See Section 3.1.2 (*Pricing Supplement*).

CHAPTER 10: STABILIZATION[29]

Stabilization is the practice by which one of the bookrunners (the "stabilizing manager") of newly issued notes supports the price of the issue by purchasing and selling notes in the open market for a limited period. These transactions may include short sales and purchases on the open market to cover positions created by short sales. Short sales involve the sale by the initial purchasers of a greater principal amount of notes than they are required to purchase in the offering. The stabilizing manager must close out any short position by purchasing notes in the open market.

A short position is more likely to be created if the initial purchasers are concerned that there may be downward pressure on the price of the notes in the open market after Pricing that could adversely affect investors who purchase in the offering. Similar to other purchase transactions, the stabilizing manager's purchases to cover short sales may have the effect of raising or maintaining the market price of the notes or preventing or retarding a decline in the market price of the notes.

10.1	**Introduction** Because high yield notes are typically somewhat illiquid, stabilization is important to the maintenance of an orderly price environment. Stabilization is regulated under MAR insofar as it seeks to influence (stabilize) the price of an in-scope security.
10.2	**MAR Stabilization Exemption** Trading in instruments for the purposes of stabilization is exempt from the prohibition against market abuse where the conditions set out under Article 5 of MAR are met. These conditions include: • stabilization is carried out for a limited period; • relevant information about the stabilization is disclosed and notified to the competent authority of the trading venue in accordance with MAR; • adequate limits with regard to price are complied with; and • such trading complies with the conditions for stabilization laid down in the Commission Delegated Regulation (EU) 2016/1052. This Regulation creates a stabilization safe harbor under MAR. Failure to comply with the requirements of the safe harbor does not automatically constitute market abuse. Nonetheless, compliance with the safe harbor is prudent to ensure stabilization activity does not result in market abuse. The requirements of the safe harbor include: • limitations on overallotments not covered by a greenshoe option[30] to 5% of the total size of the offer; • limitation on size of the greenshoe option to 15% of the total size of the offer; • limitation on the period of time during which stabilization can occur; • requirement for pre-, mid-, and post-stabilization announcements (as relevant);

[29] This chapter is focused on stabilization within the remit of MAR. Please note that stabilization practice for certain high-yield trades to which MAR does not apply may differ.

[30] A "greenshoe option" is an agreement by the issuer of a security to issue additional securities representing a percentage of the original issue size if requested by the banks placing the securities. A greenshoe option enables the banks to cover overallotments without putting their own capital at risk.

	• requirement for stabilization managers to record each stabilization "order" as well as each executed transaction; and • requirement to notify the competent authority.
10.3	**Recommendations**
10.3.1	**Appointment of the Stabilization Manager** Unless otherwise agreed, one of the lead managers should also be the stabilization manager for the transaction. If there are multiple lead managers, it is often the case that the lead manager exercising the billing and delivery function also acts as the stabilization manager. The identity of the stabilization manager and the possibility of stabilization actions will be clearly stated in the offering memorandum and its obligations will be set forth in detail in the agreement among initial purchasers. If requested by another manager, a summary of the stabilization trades, if any, should be promptly sent by the stabilization managers to the relevant manager.
10.3.2	**Stabilization Strategy** The general stabilization strategy should be agreed among the active managers. A detailed breakdown of all stabilization trades should be kept by the stabilization manager and promptly provided, upon request, to any other manager.
10.3.3	**Disclosure and Reporting** At the time of the launch of the offering, the relevant party shall ensure adequate public disclosure of the following information: (a) the fact that stabilization may not necessarily occur and that it may cease at any time; (b) the fact that stabilization transactions aimed at supporting the market price of the securities during the stabilization period; (c) the beginning and the end of the stabilization period, during which stabilization may be carried out; (d) the identity of the entity undertaking the stabilization, unless unknown at the time of disclosure, in which case it will be subject to adequate public disclosure before the stabilization begins; (e) the existence of any overallotment facility or greenshoe option and the maximum number of securities covered by that facility or option, the period during which the greenshoe option may be exercised and any conditions for the use of the overallotment facility or exercise of the greenshoe option; (f) the place where the stabilization may be undertaken, including, where relevant, the name of the trading venue. During the stabilization period, the relevant party shall ensure adequate public disclosure of the details of all stabilization transactions no later than the end of the seventh daily market session following the date of execution of such transactions. Day. Within one week of the end of the stabilization period, the relevant party shall ensure adequate public disclosure of the following information:

	(a) whether or not the stabilization was undertaken; (b) the date on the stabilization started; (c) the date on which stabilization last occurred; (d) the price range within which stabilizations was carried out, for each of the dates during which stabilization transactions were carried out; and (e) the trading venue on which stabilization were carried out, where applicable. The entities undertaking the stabilization, whether or not they act on behalf of the issuer or the offeror, shall: (a) record each stabilization order or transaction in securities and associated instruments; and (b) notify all stabilization transactions in securities and associated instruments carried out to: (i) the competent authority of each trading venue on which the securities under the stabilization are admitted to trading or are traded; and (ii) the competent authority of each trading venue where transactions in associated instruments of the stabilization are carried out.
10.3.4	**Stabilization Notices** The stabilization manager should send any pre-stabilization, mid-stabilization and post-stabilization notices to the relevant competent authority.
10.3.5	**Stabilization Accounts** Unless otherwise agreed in the relevant agreement among initial purchasers: • when the stabilization manager agrees to stabilize an issue, it may charge stabilization losses, and should account for stabilization profits to the other initial purchaser(s); and • losses or profits should be attributed pro rata to each manager's underwriting commitment. The stabilization manager should provide additional information regarding stabilization to the other initial purchasers.

CHAPTER 11: CLOSING AND SETTLEMENT

11.1	**Introduction** Closing is the time when all closing deliverables are delivered and conditions precedent to settlement are satisfied. Settlement is the process of paying funds to the issuer and delivering the securities issued by the issuer to investors.
11.2	**Circulation of Final Copies to ICSDs** Prior to, or in any case promptly after, closing: The billing and delivery manager(s) should distribute to the ICSDs copies of: • the final offering memorandum; and • the indenture (or trust deed). The issuer should distribute to the ICSDs copies of: • any issuer/ICSD agreement; and • any global note.
11.3	**Conditions Precedent to Closing** Conditions precedent that must be met before the transaction can close are set forth explicitly in the purchase agreement. See Section 3.4 (*Purchase Agreement*). The so-called "signing and closing memorandum" recites the events that took place from the outset of the transaction and lays out the steps to be taken at closing and settlement. The signing and closing memorandum further provides for form templates for certain closing deliverables. See Section 2.6.1 (*Managers' Counsel*).
11.4	**Euroclear/Clearstream Settlement Model** In March 2022, Euroclear and Clearstream introduced a new settlement model for transactions settling through Euroclear/Clearstream. Under the prior model, most transactions settled with both newly issued securities and cash payments being routed through the common depositary, with securities released to the common depositary subject to an irrevocable commitment to pay by the settlement bank. That irrevocable commitment to pay required either blocked cash or credit capacity on the part of the settlement bank and, as issuance sizes increased, the amount of cash or credit likewise increased. The new settlement model eliminates the irrevocable commitment to pay and allows for true delivery versus payment, thereby reducing the cash or credit needed to settle trades. Cash payments under the new settlement model are made directly to the issuer from the settlement bank's "commissionaire account" held with Euroclear or Clearstream and not through a common depositary. To accomplish this, the purchase agreement must include a statement from the issuer accepting the benefit of a third-party beneficiary clause in respect of the commissionaire account, which is what allows for delivery versus payment through the commissionaire account. The signing and closing memorandum must include instructions that allow the securities to be credited free of payment to the settlement bank's commissionaire account and that provide for cash payment directly from the commissionaire account to the issuer. Model clauses effecting these changes can be found in a paper published by the ICMA on 20 October 2021 titled "New Model for Syndicated Closings in the ICSDs".

	Under the new settlement model, the process for setting up settlement instructions should start well in advance of the closing and settlement date. That means in many cases managers' counsel should start work on the signing and closing memorandum and funds flow prior to Pricing. There are two reasons for this: First, Euroclear and Clearstream now require all payment instructions to be in place two business days prior to the settlement date, which is a day earlier than under the old model. Second, issuer payment checks must also be completed prior to settlement, including verification of the issuer's bank account details and call back details, preferably in time for a test transfer to be made from the settlement bank's commissionaire account to the issuer in advance of settlement. Please note this new settlement model does not affect the DTC settlement process.
11.5	**Circulation of Final Documents to Investors** As soon as possible, the lead manager should make the final offering memorandum available to investors.
11.6	**Delivery of Permanent Global Notes to ICSDs** Any permanent global note to be exchanged for a temporary global note should be made available for exchange: (a) as soon as practicable after the closing date (this enables exchange as soon as possible after the 40th day following closing); or (b) if regulations prevent exchange for a period longer than 40 days after the closing date (e.g., an issue with a tap feature), as soon as possible after the date on which such exchange is first permissible; or; (c) as otherwise disclosed in the offering memorandum or final terms/pricing supplement. Issuers should consult U.S. tax counsel to confirm fungibility if tap notes are issued.[31]
11.7	**Circulation of Final Documents to Initial Purchasers** Promptly after the closing date, managers' counsel should distribute to the initial purchasers, the issuer and issuer's counsel a complete set of electronic copies of the transaction documentation.
11.8	**Payment and Reimbursement of Fees and Expenses** For the avoidance of doubt, the payment of fees and expenses are governed by the purchase agreement, the agreement among initial purchasers and, if applicable, any engagement letter or fee side letter between the issuer and any initial purchaser. Any expenses to be charged by one lead manager to another lead manager should be submitted and reimbursed promptly, and not later than 90 days after the closing of the transaction, or as otherwise agreed in the agreement among initial purchasers. Legal costs of the issue, the cost of the issuer's professional advisers, expenses incurred for the listing, the printing and delivery of the offering memorandum and notes and all necessary approvals should not be charged against fees paid to the initial purchasers unless otherwise negotiated in the Purchase Agreement.

[31] Temporary global notes are sometime issued in order to prevent the intermingling of existing notes and newly issued notes, such as in the case of a tap issuance.

Appendix A

For the avoidance of doubt, this standard form is in a non-binding, recommended form. Individual parties are free to depart from the terms of this form and should always satisfy themselves regarding the legal, regulatory, taxation, and accounting implications of its use.

afme/ Finance for Europe

Association for Financial Markets in Europe

AFME Standard Form

Agreement Among Initial Purchasers[1]

New York Law Version[2]

Rule 144A and/or Regulation S Offering

Last Revised: February 2024

[1] Note: Please be advised that this Standard Form will require careful modification in the case of a two-Initial Purchaser offering.
[2] Note: The English Law Version of this Standard Form will be separately conformed to the updates in this Version and will be uploaded to the AFME website in due course.

IMPORTANT NOTICE

This form (the "**Standard Form**") has been prepared for the Association for Financial Markets in Europe ('**AFME**') in connection with offerings of high yield debt securities. Whilst every care has been taken in the preparation of this Standard Form, no representation or warranty is given by AFME:

- as to the suitability of the Standard Form for any particular transaction;
- that the Standard Form will cover any particular eventuality;
- as to the accuracy or completeness of the contents of this Standard Form.

In particular, users of the Standard Form should satisfy themselves as to the taxation, regulatory and accounting implications of its use and that the Standard Form is appropriate to the terms of the commercial transaction.

AFME is not liable for any losses suffered by any person as a result of any contract made on the terms of this Standard Form or which may arise from the presence of any errors or omissions in this Standard Form and no proceedings shall be taken by any person in relation to such losses.

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AGREEMENT AMONG INITIAL PURCHASERS

Date:

Issuer:

Guarantors:

Securities:

Lead Representative:

Joint Bookrunners:

Initial Purchasers:

This document (the "**Agreement**") governs the relationship among the Initial Purchasers in connection with their purchase, reoffer and resale of the Securities (the "**Offering**").

The Initial Purchasers have entered or will enter into an agreement (the "**Purchase Agreement**") with the Issuer and the Guarantors, if any, under which the Initial Purchasers, acting severally and not jointly, have agreed or will agree to purchase the Securities on the terms and conditions set forth therein. The Issuer has prepared or will prepare certain offering documents for use by the Initial Purchasers in connection with their reoffer and resale of the Securities (such documents, to the extent permitted or required by the Purchase Agreement, including any amendments and supplements thereto, the "**Offering Documents**").

The term "**Purchase Commitment**", as used in this Agreement with respect to any Initial Purchaser, shall refer to the principal amount of Securities which such Initial Purchaser is obligated to purchase pursuant to the Purchase Agreement (plus such additional Securities, if any, as such Initial Purchaser may be required to purchase pursuant to the Purchase Agreement or this Agreement). The ratio of the Purchase Commitment of any Initial Purchaser to the aggregate principal amount of Securities to be purchased by all Initial Purchasers pursuant to the Purchase Agreement is referred to in this Agreement as the "**Placement Percentage**" of such Initial Purchaser.

Each Initial Purchaser acknowledges and agrees that the recommendations of the International Capital Market Association ("**ICMA**"), as amended, modified or supplemented from time to time, including, without limitation, the ICMA recommendations concerning limits on stabilization losses and expenses, shall not apply to this transaction.[3]

1. *Authority of the Lead Representative.*

   (a) Each Initial Purchaser authorizes the Lead Representative as its agent, representative and attorney-in-fact to:

      (i) [with the agreement of the Joint Bookrunners,][4] (A) waive any and all rights of the Initial Purchasers or any of them pursuant to the Purchase Agreement, (B) give notice to the Issuer and the Guarantors, if any, of termination of the Purchase Agreement in accordance with the terms thereof, and (C) agree to any

[3] Please note that this AAIP is intended to depart from ICMA's recommendations concerning stabilization losses. Under the ICMA Standard Form Agreement Among Managers, it is not the intention to charge stabilization losses to the managers, other than to the lead managers/joint bookrunners. In contrast, the AFME HY Guidelines recommends that stabilization losses and profits should be attributed pro rata to each manager's underwriting commitment or placement percentage.

[4] The parties may consider, in certain circumstances, the appropriateness of this requirement, or provide for an alternative formulation depending on the transaction structure and participating parties (for example, transactions where the large number of bookrunners might make this unfeasible). In any case, if this language is deleted, the words ", in each case, with notice to be given to the other Initial Purchasers in advance", should be added at the end of this clause.

variation in the terms or performance of the Purchase Agreement but, for the avoidance of doubt, not execute any amendments to the Purchase Agreement[6];

(ii) [with the agreement of the Joint Bookrunners,][5] (A) exercise any and all rights of, authority vested in and discretion accorded to, and take any and all action permitted to be taken by, the Initial Purchasers or any of them pursuant to the Purchase Agreement, (B) execute and deliver any certificate, letter, receipt or other instrument to be executed or delivered by or on behalf of the Initial Purchasers for which a power of attorney is not required to be given by an Initial Purchaser[6] in connection with the closing of the Offering, and (C) take all other action that it may believe necessary or desirable in carrying out the provisions of the Purchase Agreement and this Agreement in accordance with their terms; and

(iii) pay to the Issuer the purchase price for the Securities in accordance with the Purchase Agreement on behalf of, and for the several accounts of, the Initial Purchasers, and borrow in the Initial Purchasers' names and for their several accounts (in proportion to their respective Placement Percentages) such amount as the Lead Representative may in its discretion determine in order that such payment can be effected;

provided, however, that the Lead Representative shall not, except as otherwise permitted or required by the Purchase Agreement, (x) effect or agree to an increase in the amount of Securities to be purchased by any Initial Purchaser or (y) adversely modify any rights of any Initial Purchaser to receive fees, commissions or discounts under the Purchase Agreement, in each case without the consent of such Initial Purchaser.

Each Initial Purchaser hereby ratifies all such actions heretofore taken by the Lead Representative in respect of the foregoing (provided that the consent of the Joint Bookrunners has been obtained for any actions for which Section 1(a) would require such consent).

(b) The Lead Representative [/[INSERT NAME OF RELEVANT BANK]][7] shall have the authority to offer and sell Securities for the account of the Initial Purchasers (in proportion to their respective Placement Percentages). The Lead Representative [/[INSERT NAME OF RELEVANT BANK]] shall advise each Initial Purchaser when the Securities are released for sale and of the amount of Securities sold for the account of such Initial Purchaser at such time. After completion of the Offering, the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] shall provide any Initial Purchaser with such information concerning the allocation of the Securities as it may

[5] Clauses 1(a)(i) and 1(a)(ii) should be consistent with respect to the requirement for agreement of the Joint Bookrunners. See footnote 4 for language to be inserted if the agreement of the Joint Bookrunners is not included.

[6] Please note that this AAIP will not function as a Power of Attorney for the Lead Representative(s) to execute the Purchase Agreement or other contractual documents on behalf of the other Initial Purchasers. "Therefore, it is not the intention that Clause 1(a)(i)(C) and Clause 1(a)(ii)(B) (which restrict the power of the Lead Representative to execute the Purchase Agreement on behalf of the other Initial Purchasers or other agreements for which a power of attorney is required to be given by an initial purchaser) should ever be deleted. It is also not sufficient to add an affirmative statement/clause elsewhere in this AAIP that the Lead Representative(s) will execute the Purchase Agreement (or other contractual documents) on behalf of the other Initial Purchasers, in order to try and achieve a Power of Attorney in that manner. Please note that granting a Power of Attorney to another bank to execute contractual documents on its behalf is a task which is dependent upon the constitutional documents of each bank granting the POA and requirements vary by jurisdiction. Granting Powers of Attorney to the lead bank is commonly undertaken in the EMEA investment grade (English law) DCM market but is presently not market practice in the EMEA HY market (whether NY law or English law).

[7] Where the Agreement provides for more than one Lead representative, reference should be made here to the name of the specific bank that is handling billing, delivery, allocations and stabilization.

reasonably request. Securities that are held by the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] for sale for the account of an Initial Purchaser but not sold may at any time, in the Lead Representative's [/[INSERT NAME OF RELEVANT BANK's]] discretion, be released to such Initial Purchaser, and Securities so released to such Initial Purchaser shall no longer be deemed held for sale by the Lead Representative [/[INSERT NAME OF RELEVANT BANK]].

2. *Representations, Warranties and Covenants of the Initial Purchasers.*

(a) *Compliance with Law*

Each Initial Purchaser represents and agrees that it has complied and will comply with all laws and regulations in each jurisdiction that are applicable to the Offering.

(b) *Compliance with Offering Documents and Purchase Agreement.*

Each Initial Purchaser (i) confirms that it has examined the Offering Documents and is familiar with the information contained therein, the terms of the Securities, and the other terms of the Offering, as set forth in the Purchase Agreement and the Offering Documents, and (ii) represents and agrees that it has complied and will comply with all such terms, including, without limitation, all restrictions applicable to the reoffer and resale of the Securities by the Initial Purchasers.

Each Initial Purchaser confirms that (i) the representations and warranties given by it or on its behalf in the Purchase Agreement are accurate and complete when given and (ii) the written information relating to it that has been furnished by it to the Issuer or the Lead Representative specifically for inclusion in the Offering Documents (including, without limitation, information about any material relationship between such Initial Purchaser or any of its affiliates or any of their respective directors, officers or partners and the Issuer or any Guarantor and any affiliates such persons control or that control such persons) is accurate, complete and not misleading in any material respect. Each Initial Purchaser agrees that it will notify the Lead Representative immediately of any development prior to the completion of the Offering that makes any such information inaccurate, incomplete or misleading in any material respect.

(c) *No Public Offering.*

Each Initial Purchaser acknowledges and agrees that, except as contemplated in the Purchase Agreement or the Offering Documents, no action has been or will be taken in any jurisdiction by the Issuer or any Initial Purchaser that would permit a public offering of the Securities, or possession or distribution of the Offering Documents or any other offering material, in any country or jurisdiction where action for that purpose is required.

Each Initial Purchaser agrees that it will not directly or indirectly purchase, offer, sell or deliver any Securities or have in its possession or distribute or publish the Offering Documents or any other offering material in or from any country or jurisdiction under circumstances that will impose any registration or filing obligations on any other Initial Purchaser or the Issuer[8].

(d) *No Resales Prior to Release.*

Each Initial Purchaser agrees (i) not to sell any Securities prior to the time the Lead Representative *[/[INSERT NAME OF RELEVANT BANK]]*[9] releases such Securities for

[8] Except in the event that a public offering is anticipated and the appropriate and necessary filing and registration has been approved by the relevant Joint Book Runner, with the prior approval of and on behalf of the Initial Purchasers, and the Issuer.

[9] See footnote 7.

resale to purchasers and (ii) prior to pricing of the Securities, not to engage in any activities related to credit default swaps referencing the Issuer, any Guarantor or any parent company or subsidiary of the Issuer or any Guarantor and involving the Securities.

(e) *Eligible Investors.*

Each Initial Purchaser agrees that it will reoffer and resell the Securities only (i) if the Offering contemplates sales into the United States, to persons who it and any person acting on its behalf reasonably believe are "qualified institutional buyers" within the meaning of Rule 144A ("**Rule 144A**") under the U.S. Securities Act of 1933, as amended (the "**Securities Act**"), in reliance on and compliance with Rule 144A (to whom reoffers and resales may be made using a U.S. broker-dealer affiliated with any such Initial Purchaser), and/or (ii) in offshore transactions in reliance on and in compliance with Regulation S under the Securities Act ("**Regulation S**"), and, for the avoidance of doubt, in each case, only if such reoffers and resales are permitted under the Purchase Agreement and the Offering Documents. If the Offering contemplates resales in reliance on Rule 144A, each Initial Purchaser agrees to deliver to the Lead Representative *[/[INSERT NAME OF RELEVANT BANK]]*, confirmation of any resale of the Securities to be made in reliance upon the exemption from the registration requirements of the Securities Act provided by Rule 144A.

(f) *No General Solicitation or General Advertising; No Directed Selling Efforts.*

Each Initial Purchaser represents and agrees that neither it nor any of its affiliates nor any other person acting on its or their behalf (i) has offered or sold or will offer to sell the Securities by means of any general solicitation or general advertising within the meaning of Rule 502(c) under the Securities Act or (ii) has engaged or will engage with respect to the Securities in any directed selling efforts within the meaning of Regulation S.

(g) *Distribution of Offering Documents.*

Each Initial Purchaser agrees that it will use its reasonable efforts to (i) deliver the Offering Documents to all persons to whom it distributes any Securities, (ii) keep an accurate record of all persons to whom it delivers copies of any Offering Documents and (iii) when furnished with any subsequent amendment or supplement to any Offering Documents or any memorandum outlining changes therein, promptly deliver copies thereof to all such persons. Delivery pursuant to this Section 2(g) may be made by electronic means.

(h) *No Unauthorized Communications, Representations and Information.*

Each Initial Purchaser represents and agrees that, in connection with the Offering, such Initial Purchaser:

(i) except as otherwise approved by the Joint Bookrunners, has not made, used, prepared, delivered, distributed, authorized, approved or referred to and will not make, use, prepare, deliver, distribute, authorize, approve or refer to any written communication (as defined under Rule 405 under the Securities Act) other than the Offering Documents, that constitutes an offer to sell or solicitation of an offer to buy the Securities;

(ii) except as otherwise approved by the Joint Bookrunners, has not made and will not make any representation and has not used and will not use any information other than as contained in the Offering Documents;

(iii) has not communicated or caused to be communicated and will not communicate or cause to be communicated any invitation or inducement to engage in investment activity within the meaning of the U.K. Financial Services and Markets Act 2000 ("**FSMA**") received by it in connection with the issue or sale of any Securities, except in circumstances in which Section 21(1) of the FSMA does not apply to the Issuer or any Guarantor[10]; and

(iv) except as otherwise approved by the Lead Representative, will not make, in any jurisdiction, any press or public announcement or public comment which it believes or ought reasonably to believe is likely to be published in the press or elsewhere concerning the Offering until the later of 40 days after commencement of the Offering and completion of the Offering, provided that the foregoing shall not restrict any Initial Purchaser from making any such public announcement as is required by applicable law.

(i) *Non-U.S. Banks and Dealers.*

Each Initial Purchaser that is a non-U.S. bank or dealer not registered as a broker-dealer under Section 15 of the U.S. Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), agrees that, while acting as an Initial Purchaser in respect of the Securities and in any event during the term of this Agreement, it will not, directly or indirectly, make use of any U.S. mails or any means or instrumentality of interstate commerce to effect transactions in, or induce or attempt to induce the purchase or sale of, any Securities except for transactions in compliance with Rule 15a-6 under the Exchange Act or as otherwise permitted by Section 15 of the Exchange Act and the rules and regulations thereunder.

3. *Payment and Delivery; Distribution of Moneys; Expenses; Settlement of Accounts.*

(a) *Payment for and Delivery of Securities.*

The Lead Representative [/[INSERT NAME OF RELEVANT BANK]][11] shall (i) upon satisfaction (or waiver by the Lead Representative *[/[INSERT NAME OF RELEVANT BANK]]* and with the agreement of the Joint Bookrunners (if and as required by Sections 1(a)(i) and (a)(ii) above)) of the conditions set forth in the Purchase Agreement, arrange for the payment to the Issuer of the purchase price for the Securities in accordance with the Purchase Agreement, (ii) receive (or retain from the purchase price paid pursuant to clause (i)) on behalf of each Initial Purchaser the fee, commission or discount set forth in the Purchase Agreement, (iii) subject to Section 1(b) above, arrange for delivery of the Securities in accordance with the directions of each Initial Purchaser, and (iv) release the Securities in accordance with the final sentence of Section 1(b) above for resale in accordance with the terms of the Purchase Agreement at the initial offering price as soon as practicable after the execution and delivery of the Purchase Agreement, as in the Lead Representative's [/[INSERT NAME OF RELEVANT BANK's]] judgment is advisable. At the Lead Representative's [/[INSERT NAME OF RELEVANT BANK's]] request, each Initial Purchaser shall pay the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] an amount equal to the applicable purchase price pursuant to the Purchase Agreement for the Securities allotted to such Initial Purchaser, and such payment will be credited to such Initial Purchaser's account and applied to the payment of the purchase price to the Issuer.

[10] Please open this link to view the provisions of FSMA Section 21.

[11] See footnote 7.

(b) *Transactions Through Euroclear, Clearstream and the Depository Trust Company.*

If transactions in the Securities are to be settled through the facilities of Euroclear Bank S.A./N.V., Clearstream Banking S.A. and/or the Depository Trust Company, payment for and delivery of Securities purchased by each Initial Purchaser will be made through such facilities, if such Initial Purchaser is a participant of such facilities, or, if it is not such a participant, settlement may be made through a participant of such facilities, and each Initial Purchaser authorizes the Lead Representative [/[INSERT NAME OF RELEVANT BANK]], in the Lead Representative's [/[INSERT NAME OF RELEVANT BANK]] discretion, to arrange for delivery of any Securities and for payment therefor to and by such Initial Purchaser through such facilities.

(c) *Distribution of Commission.*

After payment of the net aggregate purchase price for the Securities to the Issuer and receipt (or retention) of the Initial Purchasers' fee, commission or discount and other amounts from the Issuer in accordance with the Purchase Agreement, the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] shall, out of the balance of the moneys received by it pursuant to the issue of the Securities in accordance with the Purchase Agreement and after deducting any expenses set forth in Section 3(d) below, distribute among the Initial Purchasers the balance of such moneys [in proportion to their respective Placement Percentages,][12] in accordance with, and subject to, Section 3(e) below.

(d) *Expenses.*

The Lead Representative [/[INSERT NAME OF RELEVANT BANK]] may charge the account of each Initial Purchaser with its respective Placement Percentage of any transfer taxes on sales made by the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] of the Securities purchased by the Initial Purchasers under the Purchase Agreement, and all other expenses not reimbursed by the Issuer, including but not limited to legal fees and stabilization losses (to the extent provided in Section 4 below) incurred by the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] or, at the discretion of the Lead Representative [/[INSERT NAME OF RELEVANT BANK]], any other Initial Purchaser under this Agreement or the Purchase Agreement in connection with the Offering.

Each Initial Purchaser agrees that any offers, sales and deliveries of Securities and distribution of the Offering Documents made by such Initial Purchaser after release of the Securities to such Initial Purchaser in accordance with the final sentence of Section 1(b) above will be made at such Initial Purchaser's own expense.

(e) *Settlement of Accounts.*

The accounts hereunder will be settled as promptly as practicable after the completion of the Offering, as determined by the Lead Representative [/[INSERT NAME OF RELEVANT BANK]], and in any case no later than 90 days[13] [after the date of the closing of the purchase][14] of the Securities by the Initial Purchasers (the "**Closing Date**"), but

[12] Replace with alternative fee arrangements if applicable.

[13] Initial Purchasers that are U.S. registered Broker-Dealers or otherwise subject to regulation by FINRA should take note of the recent changes to FINRA Rule 11880 which has established, effective 1 January 2023, a two-stage syndicate account settlement process whereby the syndicate manager is required to remit to each syndicate member at least 70 percent of the gross amount due to such syndicate member within 30 days following the syndicate settlement date, with any final balance due remitted within 90 days following the syndicate settlement date. As such, Initial Purchasers that are subject to such rules may want to amend the 90-day settlement period accordingly.

[14] For transactions which close into escrow on a "no deal, no fee" basis, the bracketed language should be rephrased as "after the date of the release of the gross proceeds from escrow (the "**Completion Date**", with such date of issuance of the Notes being referred to as the "**Closing Date**").

the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] may reserve such amount as it deems advisable for additional expenses or costs. The Lead Representative's [/[INSERT NAME OF RELEVANT BANK's]] determination of the amount to be paid to or by the Initial Purchasers under this Section 3(e) will be conclusive. The Lead Representative [/[INSERT NAME OF RELEVANT BANK]] may at any time make partial distributions of credit balances or call for payment of debit balances. Any of the Initial Purchasers' funds in the Lead Representative's [/[INSERT NAME OF RELEVANT BANK]]'s hands may be held with its general funds, without accountability for interest. Notwithstanding any settlement, each Initial Purchaser will remain liable for any taxes on transfers for its account, and for its Placement Percentage of all expenses and liabilities that may be incurred by or for the accounts of the Initial Purchasers.

(f) *Reimbursements by Issuer.*

Amounts paid or reimbursed by the Issuer in respect of Initial Purchasers' expenses will be retained by the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] and distributed to the Initial Purchasers in proportion to the expenses incurred by each Initial Purchaser that such Initial Purchaser is authorized by the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] to incur and that the Issuer is required to reimburse under the Purchase Agreement.

4. *Stabilization and Over-Allotment.*

(a) *Authorization to Stabilize.*

In order to facilitate the Offering, each Initial Purchaser authorizes the Lead Representative [/[INSERT NAME OF RELEVANT BANK]][15] in its discretion (i) to buy and sell Securities and, in consultation with the Joint Bookrunners, any other debt securities of the Issuer that the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] designates, in the open market or otherwise, for long or short account, (ii) to over-allot in arranging for sales of the Securities and to buy Securities for the purpose of covering any such over-allotments, and (iii) otherwise to effect transactions with a view to supporting the market price of the Securities at levels higher than those which might otherwise prevail had such transactions not been effected (collectively, "**Stabilizing Transactions**"). Each Initial Purchaser authorizes the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] to effect Stabilizing Transactions for the account of such Initial Purchaser on such terms and at such prices as the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] deems advisable. The Lead Representative [/[INSERT NAME OF RELEVANT BANK]] (A) shall, to the extent practicable, notify and consult with each Initial Purchaser prior to effecting any Stabilizing Transactions that could reasonably be expected to result in losses being incurred for the account of the Initial Purchasers in excess of the full commission or discount due to the Initial Purchasers under the Purchase Agreement and (B) shall in any case promptly notify the Initial Purchasers if such losses have been incurred. No Initial Purchaser shall be relieved of its obligation for any losses so incurred for its account solely because of the Lead Representative's [/[INSERT NAME OF RELEVANT BANK]]'s failure to provide the notice and/or consultation required by the foregoing sentence. The Lead Representative [/[INSERT NAME OF RELEVANT BANK]] shall complete all Stabilizing Transactions no later than 30 days after the Closing Date (or, if earlier, 60 days after the date of the allotment of the Securities), unless the foregoing period is extended with the consent of each Initial Purchaser and in compliance with applicable law.

[15] See footnote 7.

(b) *Allocation of Gains or Losses.*

Any gains or losses incurred by the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] in effecting Stabilizing Transactions shall be aggregated and credited or charged by the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] to the account of each Initial Purchaser in proportion to their respective Placement Percentages. Each Initial Purchaser will, at any time as the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] determines, upon demand, take up at cost any securities purchased and deliver any securities sold or over-allotted in Stabilizing Transactions for its account pursuant to the authorization in Section 4(a) above, and, if any Initial Purchaser defaults in its corresponding commitment, the other Initial Purchasers will assume their proportionate share (based on the ratio of its Purchase Commitment to the aggregate Purchase Commitments of all non-defaulting Initial Purchasers) of such commitment without relieving the defaulting Initial Purchaser from liability.

(c) *Undertaking Not to Stabilize.*

Each Initial Purchaser (other than the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] in its capacity as such) represents and agrees that it has not effected and will not effect any transactions (whether in the open market or otherwise) with a view to stabilizing or maintaining the market price of the Securities at levels other than those which might otherwise prevail.

(d) *Regulatory Inquiries.*

The Lead Representative [/[INSERT NAME OF RELEVANT BANK]] shall, to the extent practicable, act as a central point of inquiry for any request from any relevant regulatory authority in relation to stabilization and shall promptly provide each Initial Purchaser with any information concerning Stabilizing Transactions as such Initial Purchaser is required to provide to any relevant regulatory authority.

(e) *Information about Stabilizing Transactions.*

The Lead Representative [/[INSERT NAME OF RELEVANT BANK]] shall, after the completion of all Stabilizing Transactions, provide any Initial Purchaser with such information concerning the Stabilizing Transactions as may be reasonably requested by such Initial Purchaser.

(f) *Delegation.*

The Lead Representative [/[INSERT NAME OF RELEVANT BANK]] may delegate any of its rights or obligations under this Section 4 to any of its affiliates other than an affiliate constituting a fund in the business of holding securities for its own account. Notwithstanding any such delegation, the Lead Representative [/[INSERT NAME OF RELEVANT BANK]] shall retain its obligations to the other Initial Purchasers hereunder.

5. *Default by Initial Purchasers.*

(a) A default by any Initial Purchaser hereunder or under the Purchase Agreement will not release any other Initial Purchaser from its obligations or affect such defaulting Initial Purchaser's liability to any other Initial Purchaser for damages resulting from its own default. If any Initial Purchaser defaults in its obligation to purchase Securities under the Purchase Agreement, the Lead Representative may arrange for the purchase by others, including any non-defaulting Initial Purchaser, of Securities not taken up by the defaulting Initial Purchaser in accordance with the Purchase Agreement. If any Initial Purchaser defaults in its obligation to make any payments under Section 3(d), 4, 7, 8 or 10 hereof, each non-defaulting Initial Purchaser shall be obligated to pay its

proportionate share of all such defaulted payments, based on the ratio of its Purchase Commitment to the aggregate Purchase Commitments of all non-defaulting Initial Purchasers, but no such payment shall relieve the defaulting Initial Purchaser from liability for its default.

(b) [Subject to the provisions in 5(a), in the case that the Lead Representative is a defaulting Initial Purchaser, the non-defaulting Initial Purchasers shall jointly appoint one of the non-defaulting Initial Purchasers designated by the Issuer to act as the new Lead Representative and assume the Lead Representative's rights, duties and obligations under the Agreement, provided that, such appointment shall not relieve the defaulting Lead Representative from liability to the non-defaulting Initial Purchasers for its default. For the avoidance of doubt, the defaulting Lead Representative shall lose all its rights and authority as Lead Representative under this Agreement.]

6. *Position of the Lead Representative and the Joint Bookrunners; Relationship Between Initial Purchasers.*

The Lead Representative and the Joint Bookrunners will be under no liability to any Initial Purchaser for any act or omission except for obligations expressly assumed by the Lead Representative or the Joint Bookrunners herein, and no obligations on the Lead Representative's or the Joint Bookrunners' part will be implied hereby or inferred here from. The rights and liabilities of the Initial Purchasers hereunder are several and not joint, the representations, warranties and covenants of the Initial Purchasers hereunder are given severally and not jointly, and nothing contained herein shall constitute or be deemed to constitute the Initial Purchasers as partners with each other or (except as expressly provided herein) render any Initial Purchaser liable for the obligations of any other Initial Purchaser. No Initial Purchaser shall be bound in any way by the acts of any other Initial Purchaser in respect of the issue of the Securities except those of the Lead Representative on behalf of the Initial Purchasers pursuant to the provisions of this Agreement or the Purchase Agreement, and no Initial Purchaser shall have any right to contribution or account against any other Initial Purchaser except as expressly provided herein. Each Initial Purchaser shall bear all losses and expenses incurred by it and be entitled to retain all profits earned by it in connection with the Purchase Agreement except as otherwise expressly provided herein. If for U.S. federal income tax purposes the Initial Purchasers shall be deemed to constitute a partnership, each Initial Purchaser elects to be excluded from the application of Subchapter K, Chapter 1, Subtitle A, of the U.S. Internal Revenue Code, as amended.

7. *Indemnification.*

Each Initial Purchaser (each, an "**Indemnifying Initial Purchaser**") will indemnify and hold harmless each other Initial Purchaser, its affiliates, their respective officers, directors, employees, representatives and agents, and each person, if any, who controls any such Initial Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act (each, an "**Indemnified Party**") to the extent and upon the terms upon which such Indemnifying Initial Purchaser agrees to indemnify and hold harmless any of the Issuer, any Guarantor, any person controlling the Issuer or any Guarantor, and their respective directors and officers, in each case as set forth in the Purchase Agreement. The Indemnifying Initial Purchaser will also indemnify and hold harmless each Indemnified Party from and against any and all losses, claims, damages, liabilities, costs and expenses (including fees and expenses of legal advisers) arising out of or in connection with any breach by the Indemnifying Initial Purchaser of any of the provisions of this Agreement or the Purchase Agreement (including, without limitation, the representations, warranties and covenants in Section 2(b) above), and any litigation, investigation, proceeding, claim or other action which is asserted, threatened, or instituted by any party, including any governmental or regulatory body (collectively, "**Actions**") relating to any matter covered by this Section 7. The Indemnifying Initial Purchaser will also reimburse each Indemnified Party upon demand for all expenses,

including fees and expenses of legal advisers, as they are incurred, in connection with investigating, preparing for or defending any matter covered by this Section 7.

8. *Contribution.*

Each Initial Purchaser will pay, as contribution, its Placement Percentage of any losses, claims, damages, liabilities and, except as limited by the next sentence, costs and expenses (collectively, "**Losses**"), joint or several, paid or incurred by any Initial Purchaser to any person other than an Initial Purchaser, in connection with the Offering (including, without limitation, Losses arising out of or based upon any untrue statement or alleged untrue statement of any material fact contained in any of the Offering Documents, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading (other than an untrue statement or alleged untrue statement or omission or alleged omission to the extent made in reliance upon and in conformity with written information furnished by the Initial Purchaser seeking contribution expressly for use therein)) and any Action relating to any of the foregoing. Each Initial Purchaser will also pay its Placement Percentage of any legal or other expenses, including fees and expenses of legal advisers (to the extent such payment of fees and expenses of legal advisers is required under Section 10 below), as they are incurred, which are reasonably incurred by the Initial Purchaser seeking contribution in connection with investigating or defending any such Loss or any Action in respect thereof. No Initial Purchaser shall be entitled to contribution in respect of any such Losses or Actions arising out of or in connection with (i) any Action by a regulatory or supervisory body by which such Initial Purchaser is authorized or regulated, in respect of a breach of the rules or regulations of that body by such Initial Purchaser or (ii) any breach by such Initial Purchaser of any of the provisions of this Agreement or the Purchase Agreement. In determining the amount of any Initial Purchaser's obligation under this Section 8, appropriate adjustment may be made by the Lead Representative to reflect any amounts received by any Initial Purchaser in respect of such Loss from the Issuer or any other person (other than an Initial Purchaser) pursuant to the Purchase Agreement or otherwise. There shall be credited against any amount paid or payable by any Initial Purchaser pursuant to this Section 8 any Loss that is incurred by such Initial Purchaser as a result of any such Action, and if such Loss is incurred by such Initial Purchaser subsequent to any payment by it pursuant to this Section 8, appropriate provision shall be made to effect such credit, by refund or otherwise. In determining amounts payable pursuant to this Section 8, any Loss incurred by any person who controls an Initial Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act that has been incurred by reason of such control relationship shall be deemed to have been incurred by that Initial Purchaser. Whenever an Initial Purchaser receives notice of any Action to which the provisions of this Section 8 would be applicable, such Initial Purchaser will give prompt notice thereof to each of the other Initial Purchasers. No Initial Purchaser shall be entitled to contribution from any other Initial Purchaser pursuant to this Section 8 for any Loss arising out of or in connection with a settlement or compromise of, or consent to the entry of judgment with respect to any Action, unless such settlement, compromise or consent is in accordance with Section 9 below. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. None of the foregoing provisions of this Section 8 will relieve any defaulting or breaching Initial Purchaser from liability for its default or breach.

9. *Settlement of Actions.*

Neither the Lead Representative nor any other Initial Purchaser party to this Agreement may settle or agree to settle any Action related to or arising out of the Offering, unless the Lead Representative, together with such other Initial Purchasers as represent a majority of the Placement Percentage of the Initial Purchasers as a whole (including the Lead Representative's interest), approve the settlement of such Action, in which case the Lead Representative is authorized to settle for all Initial Purchasers, provided, however, that the

settlement agreement results in the settlement of the Action against all Initial Purchasers raised by the plaintiffs party thereto.

10. *Retention of Legal Advisers.*

Except as provided for in Section 7 above, where any Action related to or arising out of the Offering is brought against any of the Initial Purchasers, the Joint Bookrunners shall retain legal advisers reasonably satisfactory to all of them to represent the person against whom such Action is brought and each Initial Purchaser shall pay its Placement Percentage of the fees and expenses of such legal advisers related to such Action. Except as provided for in Section 7 above, in any such Action, any Initial Purchaser shall have the right to retain its own legal advisers, but the fees and expenses of such legal advisers shall be the liability of such Initial Purchaser unless any of the following circumstances occur in which case they shall be the liability of all of the Initial Purchasers on the basis of their respective Placement Percentages:

(i) the Joint Bookrunners have failed within a reasonable time to agree on the legal advisers to be retained; or

(ii) counsel selected by the Joint Bookrunners determines that representation of all Initial Purchasers by the same legal advisers would be inappropriate due to actual or potential differing interests between them.

11. *Actions in Respect of the Purchase Agreement.*

If any Initial Purchaser wishes to terminate its obligation to purchase Securities under the Purchase Agreement or waive compliance with any of the conditions therein, in each case as permitted by the terms thereof, it shall consult with the Lead Representative who shall, to the extent it considers reasonably practicable, consult with the other Initial Purchasers. The Lead Representative may in any event, on behalf of the Initial Purchasers and with the agreement of the Joint Bookrunners (if and as required by Sections 1(a)(i) and (a)(ii) above), give notice to the Issuer and the Guarantors, if any, of termination of the Purchase Agreement or waiver of compliance with any of the conditions therein in accordance with the terms thereof and shall not be responsible to any Initial Purchaser for any consequences resulting from such notice. No Initial Purchaser other than the Lead Representative may give any such notice, and the Lead Representative is not required to give, or not to give, such notice.

12. *Termination.*

If the Purchase Agreement is terminated prior to the Closing Date as permitted by its terms, this Agreement will terminate upon the date of such termination of the Purchase Agreement.

Upon termination of this Agreement, Sections 3(d), 5, 6, 7, 8, 9, 10, 13, 14, 15, 18, 19, 20 and 21 hereof shall survive.

13. *Notices.*

Any notice or, unless otherwise agreed, approval under this Agreement shall be deemed to have been given if mailed, hand-delivered, or sent by telecopier or electronic transmission or other communication in writing, or telephoned and subsequently confirmed in writing, to the relevant address set forth in the Purchase Agreement or in Annex A to this Agreement. Any such notice shall take effect upon receipt thereof.

14. *No Third Party Rights.*

Nothing expressed or referred to in this Agreement will be construed to give any person other than the parties to this Agreement and their respective successors and permitted assigns any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision hereof, except as expressly set forth in Section 7 above.

15. *Applicable Law; Jurisdiction.*

This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

The federal and state courts in the Borough of Manhattan in the City of New York shall have jurisdiction to settle any disputes which may arise out of or in connection with this Agreement and, accordingly, any legal action or proceedings arising out of or in connection with this Agreement ("**Proceedings**") may be brought in such courts. Each of the parties hereto irrevocably submits to the non-exclusive jurisdiction of the federal and state courts in the Borough of Manhattan in the City of New York and waives any objection to Proceedings in such courts on the grounds of immunity, venue or that Proceedings have been brought in an inconvenient or inappropriate forum.

Each of the parties hereto irrevocably waives its right to a trial by jury in any Proceedings.

16. *Counterparts; Electronic Signatures.*

This Agreement may be signed in various counterparts, which together shall constitute one and the same instrument. Any signature to this Agreement delivered by facsimile, electronic mail (including pdf) or any electronic signature complying with the U.S. federal ESIGN Act of 2000 or the New York Electronic Signature and Records Act or other transmission method will be deemed an original signature for the purposes of this Agreement and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes to the fullest extent permitted by applicable law. For the avoidance of doubt, the foregoing also applies to any amendment, extension or renewal of this Agreement.

17. *Headings.*

The headings herein are inserted for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement.

18. *Transfers to EU Affiliates*

This Agreement may not be amended or modified except by a writing executed by each of the parties hereto, save that each Initial Purchaser (whether it is an original party to this Agreement or a party to whom this Agreement has been previously transferred pursuant to this paragraph) shall be entitled to assign or transfer all of its rights or obligations under this Agreement to any affiliate registered in the European Union or which is also carrying on EU-regulated services (in each case, the "EU Affiliate") by notice in writing, and from the date of such transfer, references to such Initial Purchaser shall be read as references to such EU Affiliate. Upon completion of such assignment or transfer of all rights and obligations under this Agreement, each transferor pursuant to this Section 18 shall be released from its obligations under this letter agreement.

19. *Acknowledgement and Consent to Bail-In of EEA Financial Institutions.*

Notwithstanding and to the exclusion of any other term of this Agreement or any other agreements, arrangements or understanding between the Initial Purchasers, each of the Initial Purchasers acknowledges and accepts that a BRRD Liability arising under this Agreement may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and acknowledges, accepts, and agrees to be bound by:

(a) the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of an Initial Purchaser to each other Initial Purchaser

under this Agreement, that (without limitation) may include and result in any of the following, or some combination thereof:

(i) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon;

(ii) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of the relevant Initial Purchaser or another person (and the issue to or conferral on the other Initial Purchasers of such shares, securities or obligations);

(iii) the cancellation of the BRRD Liability;

(iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;

(b) the variation of the terms of this Agreement, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

For the purposes of this Section 19:

"**Bail-in Legislation**" means in relation to any member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time.

"**Bail-in Powers**" means any write-down and conversion powers as defined in the EU Bail-in Legislation Schedule, in relation to the relevant Bail-in Legislation.

"**BRRD**" means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

"**EU Bail-in Legislation Schedule**" means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at http://www.lma.eu.com/pages.aspx?p=499.

"**BRRD Liability**" means a liability in respect of which the relevant write-down and conversion powers in the applicable Bail-in Legislation may be exercised.

"**Relevant Resolution Authority**" means the resolution authority with the ability to exercise any Bail-in Powers in relation to any Initial Purchaser.

20. *Recognition of U.K. Bail-in Powers.*

Notwithstanding and to the exclusion of any other term of this Agreement or any other agreements, arrangements or understanding among the Initial Purchasers, each Initial Purchaser acknowledges and accepts that a U.K. Bail-in Liability arising under this Agreement may be subject to the exercise of U.K. Bail-in Powers by the relevant U.K. resolution authority, and acknowledges, accepts and agrees to be bound by:

(a) the effect of the exercise of U.K. Bail-in Powers by the relevant U.K. resolution authority in relation to any U.K. Bail-in Liability of any Initial Purchaser to one or more other Initial

Purchasers under this Agreement, which (without limitation) may include and result in any of the following, or some combination thereof:

(i) the reduction of all, or a portion, of the U.K. Bail-in Liability or outstanding amounts due thereon;

(ii) the conversion of all, or a portion, of the U.K. Bail-in Liability into shares, other securities or other obligations of such Initial Purchaser or another person, and the issue to or conferral on one or more of the other Initial Purchasers of such shares, securities or obligations;

(iii) the cancellation of the U.K. Bail-in Liability; and

(iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;

(b) the variation of the terms of this Agreement, as deemed necessary by the relevant UK resolution authority, to give effect to the exercise of U.K. Bail-in Powers by the relevant U.K. resolution authority.

For the purposes of this Section 20:

"**U.K. Bail-in Legislation**" means Part I of the U.K. Banking Act 2009 and any other law or regulation applicable in the U.K. relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (otherwise than through liquidation, administration or other insolvency proceedings).

"**U.K. Bail-in Liability**" means a liability in respect of which the U.K. Bail-in Powers may be exercised.

"**U.K. Bail-in Powers**" means the powers under the U.K. Bail-in Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or affiliate of a bank or investment firm, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability.

21. *Recognition of the U.S. Special Resolution Regimes.*

(a) In the event that any Initial Purchaser that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from such Initial Purchaser of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that any Initial Purchaser that is a Covered Entity or a BHC Act Affiliate of such Initial Purchaser, becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Initial Purchaser are permitted to be exercised to no greater extent than such Default Rights that could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

For purposes of this Section 21:

"**BHC Act Affiliate**" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

"**Covered Entity**" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"**Default Right**" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"**U.S. Special Resolution Regime**" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

[NAME OF LEAD REPRESENTATIVE]
as the Lead Representative and
as a Joint Bookrunner and
as an Initial Purchaser

By:_____
Name:
Title:

[NAME OF JOINT BOOKRUNNER]
as a Joint Bookrunner and
as an Initial Purchaser

By:_____
Name:
Title:

[NAME OF INITIAL PURCHASER]
as an Initial Purchaser

By:_____
Name:
Title:

[NAME OF INITIAL PURCHASER]
as an Initial Purchaser

By:_____
Name:
Title:

ANNEX A

ADDRESS FOR NOTICES

[NAME OF LEAD REPRESENTATIVE]

Attention:
Mailing address:
Telephone:
Telecopier:
E-mail:

[NAME OF JOINT BOOKRUNNER]

Attention:
Mailing address:
Telephone:
Telecopier:
E-mail:

[NAME OF INITIAL PURCHASER]

Attention:
Mailing address:
Telephone:
Telecopier:
E-mail:

[NAME OF INITIAL PURCHASER]

Attention:
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