

**IMPORTANT NOTE**

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INCOME BONDS IN MIND.**

**EURIBOR BENCHMARK RATE MODIFICATION LANGUAGE**

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

**[X] Benchmark Rate Modification**

*Benchmark Rate Modification Event<sup>1</sup>*

- (a) Notwithstanding the provisions of Condition [Y] (*Modification and Waiver*) or anything to the contrary, the following provisions will apply if the Issuer [(or [the Issuer Cash

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<sup>1</sup> Note that where such a change to the reference rate would normally constitute a 'Basic Terms Modification', amendments made pursuant to this condition should be carved out.

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Manager]<sup>2</sup> [or the Rate Determination Agent]<sup>34</sup> acting on behalf of the Issuer)] determines that a Benchmark Rate Modification Event has occurred.

- (b) Following the occurrence of a Benchmark Rate Modification Event, the Rate Determination Agent shall determine (acting in good faith and in a commercially reasonable manner) an Alternative Benchmark Rate and the Note Rate Maintenance Adjustment (if required<sup>5</sup>) [and any additional Benchmark Rate Modifications<sup>6</sup>], provided that where the Rate Determination Agent is not [the Seller or an affiliate of the Seller], it shall make any determination in consultation with the Issuer (or [the Issuer Cash Manager] on behalf of the Issuer).
- (c) The [Note Trustee/Representative of the Noteholders]<sup>7</sup> shall, subject to the provisions of this Condition [X], be obliged to concur with the Issuer in making any Benchmark Rate Modification, provided that the Issuer and the Rate Determination Agent deliver a Benchmark Rate Modification Certificate to the [Note Trustee/Representative of the Noteholders] (copied to the [Paying Agents]<sup>8</sup>), upon which the [Note Trustee/Representative of the Noteholders] and [Paying Agents] shall rely absolutely without further investigation.

#### *Conditions to Benchmark Rate Modification*

- (d) It is a condition to any such Benchmark Rate Modification that:
  - (i) either:
    - (A) the Issuer[, or the Issuer Cash Manager on behalf of the Issuer,] has obtained from each of the Rating Agencies written confirmation (or certifies in the Benchmark Rate Modification Certificate that it has been unable to obtain written confirmation, but has received oral confirmation from an appropriately authorised person at each of the Rating Agencies) that the proposed Benchmark Rate Modification would not result in a

<sup>2</sup> Throughout, references to Issuer Cash Manager acting on behalf of the Issuer should only be included where the Issuer Cash Manager is the Seller or an affiliate of the Seller.

<sup>3</sup> The role of Rate Determination Agent may be performed by a transaction party; in particular, the Seller may wish to take this role where that party remains an active originator in the European securitisation market. However, it may be helpful to provide the flexibility for an independent third-party to perform the role of Rate Determination Agent (most likely in some form of advisory role for this type of transaction). A third-party Rate Determination Agent may be appointed from the outset of the securitisation transaction or it may be appointed at a later date, such as following (or in anticipation of) the occurrence of a Benchmark Rate Modification Event. If transaction parties wish to provide for the option of a third-party Rate Determination Agent then the transaction documents should be drafted at the outset to allow for this, otherwise it is unlikely that the Note Trustee/Representative of Noteholders would be able to approve such appointment without express Noteholder consent. Provision should be made for payment of the Rate Determination Agent's fees/indemnities in the priorities of payment, allowing for a Rate Determination Agent to accede as a Secured Creditor if appointed at a later stage (although this may be unnecessary in practice, depending of the requirements of the entity performing the role) and providing for the Issuer to enter into a Rate Determination Agent appointment letter which would include any necessary protections and indemnities for the Rate Determination Agent, as well as setting out operational mechanics. The Transaction Documents would need to expressly direct the Note Trustee/Representative of Noteholders to approve the appointment of a Rate Determination Agent without requiring Noteholder consent (provided the appointed party has the characteristics required in the suggested definition of "Rate Determination Agent").

<sup>4</sup> The Rate Determination Agent may be referenced in paragraph (a) as one of the parties which may determine whether a Benchmark Rate Modification Event has occurred, but parties should note that the Rate Determination Agent will only be able to do so if they are appointed at the outset or otherwise prior to the occurrence of a Benchmark Rate Modification Event, otherwise this will need to be determined by a party such as the Issuer Cash Manager.

<sup>5</sup> A Note Rate Maintenance Adjustment may not be required if, for example, the Alternative Benchmark Rate chosen already has an adjustment factor to the relevant risk free rate built into it.

<sup>6</sup> To be considered on a deal by deal basis whether the Rate Determination Agent can advise on this.

<sup>7</sup> The type of entity fulfilling this role will vary depending on governing law of the Notes for example a Trustee, a Representative of the Noteholders or a Security Agent.

<sup>8</sup> The use of the term "Paying Agents" within this model language should cover any agent with responsibility for calculating the interest rate – select the appropriate defined term for the transaction. Please note that it will be necessary to consensually involve the paying agents and other relevant transaction parties (such as swap counterparties), ideally at the earliest time possible, to identify changes to the documents which are operable in the context of the transaction.

Negative Ratings Action and, if relevant, it has provided a copy of any written confirmation to the [Note Trustee/Representative of the Noteholders] appended to the Benchmark Rate Modification Certificate; or

(B) the Issuer[, or the Issuer Cash Manager on behalf of the Issuer,] certifies in the Benchmark Rate Modification Certificate that it has given the Rating Agencies at least 10 Business Days' prior written notice of the proposed Benchmark Rate Modification and none of the Rating Agencies has indicated that such modification would result in a Negative Ratings Action;

- (ii) the Issuer has given at least 10 Business Days' prior written notice of the proposed Benchmark Rate Modification to the [Note Trustee/Representative of the Noteholders] and the [Paying Agents] before publishing a Benchmark Rate Modification Noteholder Notice<sup>9</sup>;
- (iii) the Issuer has provided to the Noteholders of each Class of Notes a Benchmark Rate Modification Noteholder Notice, at least [40] calendar days prior to the date on which it is proposed that the Benchmark Rate Modification would take effect (such date being no less than ten Business Days prior to the next Interest Determination Date)<sup>10</sup>, in accordance with Condition [•] (*Notice to Noteholders*);
- (iv) Noteholders representing at least [10 per cent.] of the [aggregate Principal Amount Outstanding of the Most Senior Class of Notes]<sup>11</sup> on the Benchmark Rate Modification Record Date have not directed the [Issuer/Paying Agent (acting on behalf of the Issuer)/Note Trustee/Representative of the Noteholders] in writing (or otherwise directed the [Issuer/Paying Agent (acting on behalf of the Issuer)/Note Trustee/Representative of the Noteholders] in accordance with the then current practice of any applicable clearing system through which such Notes may be held) within such notification period that such Noteholders do not consent to the Benchmark Rate Modification; and
- (v) either (i) the Seller [or Administrator] has agreed to pay, or to put the Issuer in funds to pay, the Benchmark Rate Modification Costs or (ii) the Benchmark Rate Modification Costs shall be paid out of paragraph [*insert reference for third party costs and expenses*] of the [Pre-Enforcement Priority of Payments].

#### *Note Rate Maintenance Adjustment*

- (e) The Rate Determination Agent shall use reasonable endeavours to propose a Note Rate Maintenance Adjustment as reasonably determined by the Rate Determination Agent, taking into account any note rate maintenance adjustment mechanisms endorsed by the

<sup>9</sup> This is to ensure that the [Paying Agents] and [Note Trustee/Representative of Noteholders] have sufficient time to consider and comment on the proposed modifications before they are notified to Noteholders to ensure that what is being proposed is operationally workable. However, ideally, the [Paying Agents] and [Note Trustee/Representative of Noteholders] will be involved at an even earlier stage in planning any Benchmark Rate Modification.

<sup>10</sup> This is to allow [Paying Agents] to ensure that their systems are updated and reflect the new calculations and adjustments before the calculation day. For the avoidance of doubt, the reference to the next Interest Determination Date refers to what would have been the Interest Determination Date prior to any modification and not as modified by the Benchmark Rate Modification.

<sup>11</sup> Note that this provision currently allows only the Most Senior Class to object. This model language was drafted on the basis that limiting this right to the Most Senior Class may help to facilitate/ease the passage of such modifications. To be considered on a deal-by-deal/jurisdiction by jurisdiction basis. Also consider what specific disclosure is required in relation to this (risk factors etc.).

ECB or ESMA or their sponsored committees or bodies, or mechanisms that have become generally accepted market practice (the *Market Standard Adjustments*). The rationale for the proposed Note Rate Maintenance Adjustment and, where relevant, any deviation from the Market Standard Adjustments, shall be set out in the Benchmark Rate Modification Certificate and the Benchmark Rate Modification Noteholder Notice.

- (f) If any Note Rate Maintenance Adjustment is proposed, the Note Rate Maintenance Adjustment applicable to each Class of Notes other than the Most Senior Class of Notes shall be at least equal to that applicable to the Most Senior Class of Notes. In circumstances where the Issuer proposes a lower Note Rate Maintenance Adjustment on any Class of Notes other than the Most Senior Class than that which is proposed for the Most Senior Class of Notes or another Class of Notes which ranks senior to the Class of Notes to which the lower Note Rate Maintenance Adjustment is proposed to be made, the Benchmark Rate Modification will not be made unless an Extraordinary Resolution is passed in favour of such modification in accordance with Condition [•] (*Meetings of Noteholders*) by the Noteholders of each Class of Notes then outstanding to which the lower Note Rate Maintenance Adjustment is proposed to be made.

*Noteholder negative consent rights*

- (g) If Noteholders representing at least [10 per cent.] of the aggregate [Principal Amount Outstanding of the Most Senior Class of Notes] outstanding on the Benchmark Rate Modification Record Date have directed the [Issuer/Paying Agent (acting on behalf of the Issuer)/Note Trustee/Representative of the Noteholders] in writing (or otherwise directed the [Issuer/Paying Agent (acting on behalf of the Issuer)/Note Trustee/Representative of the Noteholders] in accordance with the then current practice of any applicable clearing system through which such Notes may be held) within the notification period referred to above that they do not consent to the proposed Benchmark Rate Modification, then the proposed Benchmark Rate Modification will not be made unless an Extraordinary Resolution is passed in favour of such proposed Benchmark Rate Modification in accordance with Condition [•] (*Meetings of Noteholders*) by [each Class of Noteholders]<sup>12</sup>.

*Miscellaneous*

- (h) The Issuer shall use reasonable endeavours to agree modifications to each hedging agreement where commercially appropriate so that the Transaction is hedged following the Benchmark Rate Modification to a similar extent as prior to the Benchmark Rate Modification.
- (i) Other than where specifically provided in this Condition [X]:
  - (i) when concurring in making any modification pursuant to this Condition [X], the [Note Trustee/Representative of the Noteholders] shall not consider the interests of the Noteholders, any other Issuer Secured Creditor or any other person and shall act and rely solely and without further investigation, on any Benchmark Rate Modification Certificate (and any evidence appended to such Benchmark Rate Modification Certificate) provided to it by the Rate Determination Agent, the Issuer [, or the Issuer Cash Manager on behalf of the Issuer,] pursuant to this

<sup>12</sup> To be considered on a deal-by-deal/jurisdiction by jurisdiction basis whether this should be each class or just the most senior class of Notes.

Condition [X] and shall not be liable to the Noteholders, any other Issuer Secured Creditor or any other person for so acting or relying, irrespective of whether any such modification is or may be materially prejudicial to the interests of any such person;

- (ii) the [Note Trustee/Representative of the Noteholders] shall not be obliged to concur in making any modification which, in the sole opinion of the [Note Trustee/Representative of the Noteholders] would have the effect of (A) exposing the [Note Trustee/Representative of the Noteholders] to any liability against which it has not been indemnified and/or secured and/or pre-funded to its satisfaction or (B) increasing the obligations or duties, or decreasing the rights or protection, of the [Note Trustee/Representative of the Noteholders] in the Transaction Documents and/or these Conditions; and
  - (iii) [the [Paying Agents] shall not be obliged to [consent to/perform] any modification which, in the sole opinion of the [Paying Agents] would have the effect of (A) exposing the [Paying Agents] to any liability against which it has not been indemnified and/or secured and/or pre-funded to its satisfaction or (B) increasing the obligations or duties, or decreasing the rights or protection, of the [Paying Agents] in the Transaction Documents and/or these Conditions.]
- (j) Any Benchmark Rate Modification shall be binding on all Noteholders and shall be notified by the Issuer as soon as reasonably practicable to:
  - (i) so long as any of the Notes rated by the Rating Agencies remains outstanding, each Rating Agency;
  - (ii) the Issuer Secured Creditors; and
  - (iii) the Noteholders in accordance with Condition [•] (*Notice to Noteholders*).
- (k) Following the making of a Benchmark Rate Modification, if the Issuer [, or the Issuer Cash Manager on behalf of the Issuer,] determines that it has become generally accepted market practice in the [publicly listed mortgage / asset backed floating rate notes] market to use a Benchmark Rate of interest which is different from the Alternative Benchmark Rate which had already been adopted by the Issuer in respect of the Notes pursuant to a Benchmark Rate Modification, the Issuer [(or [the Issuer Cash Manager] [or the Rate Determination Agent] acting on behalf of the Issuer)] is entitled to propose a further Benchmark Rate Modification pursuant to the terms of this Condition [X].
- (l) Notwithstanding any provision of the Conditions, if in a [Paying Agent's] sole opinion there is any uncertainty between two or more alternative courses of action in making any determination or calculation provided for by the terms of a Benchmark Rate Modification, the relevant [Paying Agent] shall promptly notify the Issuer thereof and the Issuer shall [following consultation with the Rate Determination Agent] direct the relevant [Paying Agent] in writing as to which alternative course of action to adopt. If the relevant [Paying Agent] is not promptly provided with such direction, or is otherwise unable (other than due to its own gross negligence, wilful default or fraud) to make such calculation or determination for any reason, it shall notify the Issuer thereof and the relevant [Paying

Agent] shall be under no obligation to make such calculation or determination and (in the absence of such gross negligence, wilful default or fraud) shall not incur any liability for not doing so.

## **Definitions:**

***Alternative Benchmark Rate*** means an alternative reference rate to be substituted for EURIBOR in respect of the Notes, being any of the following:

- (a) a reference rate which has been recognised or endorsed as a rate which should or could be used, subject to adjustments (if any), to replace EURIBOR by either (x) the ECB, ESMA, or any relevant committee or other body established, sponsored or approved by any of the foregoing, including the Working Group on Euro Risk-Free Rates or (y) an industry body recognised nationally or internationally as representing participants in the mortgage / asset backed securitisation market generally; or
- (b) a reference rate utilised in a material number of publicly-listed new issues of Euro denominated mortgage / asset backed floating rate notes in the six months prior to the proposed effective date of such Benchmark Rate Modification; or
- (c) a reference rate utilised in a publicly-listed new issue of Euro denominated mortgage / asset backed floating rate notes where the originator of the relevant assets is [insert Originator] or an affiliate of [insert Originator]; or
- (d) such other reference rate as the Rate Determination Agent reasonably determines provided that this option may only be used if the Issuer certifies to the [Note Trustee/Representative of the Noteholders] that, in its reasonable opinion, neither paragraphs (i), (ii) or (iii) above are applicable and/or practicable in the context of the Transaction and that the Issuer has received from the Rate Determination Agent reasonable justification of such determination;

***Benchmark Rate Modification*** means any modification to these Conditions or any other Transaction Document or entering into any new, supplemental or additional document that the Issuer [or the Rate Determination Agent] considers necessary or advisable for the purpose of changing the benchmark rate from EURIBOR in respect of the Notes to the Alternative Benchmark Rate and making such other amendments to these Conditions or any other Transaction Document as are necessary or advisable in the reasonable judgment of the Issuer [and/or the Rate Determination Agent] to facilitate the changes envisaged pursuant to this Condition [X];

***Benchmark Rate Modification Certificate*** means a certificate signed by each of the Issuer and the Rate Determination Agent and addressed to the [Note Trustee/Representative of the Noteholders] and copied to the [Paying Agents] certifying that:

- (a) the Benchmark Rate Modification is being undertaken as a result of the occurrence of a Benchmark Rate Modification Event and such modification is required solely for such purpose and has been drafted solely to such effect; and
- (b) the Alternative Benchmark Rate proposed falls within limb [(a)], [(b)], [(c)] or [(d)] (*delete as applicable*) of the definition of Alternative Benchmark Rate and where limb (d) applies, the Issuer shall certify that, in its opinion, none of paragraphs (a), (b) or (c) of the definition of Alternative Benchmark Rate is applicable and/or practicable in the context of the Transaction and sets out the justification for such determination (as provided by the Rate Determination Agent); and



- (c) the same Alternative Benchmark Rate will be applied to all<sup>13</sup> [rated] Classes of Notes issued in Euros; and
- (d) either (i) it has obtained written confirmation from each of the Rating Agencies that the proposed Benchmark Rate Modification would not result in a Negative Ratings Action [and such written confirmation is appended to the Benchmark Rate Modification Certificate]; or (ii) it has been unable to obtain written confirmation from each of the Rating Agencies that the proposed Benchmark Rate Modification would not result in a Negative Ratings Action but it has received oral confirmation from an appropriately authorised person at such Rating Agency; or (iii) it has given the Rating Agencies at least 10 Business Days' prior written notice of the proposed modification and none of the Rating Agencies has indicated that such Benchmark Rate Modification would result in a Negative Ratings Action; and
- (e) the details of and the rationale for the Note Rate Maintenance Adjustment (or absence of any Note Rate Maintenance Adjustment) are as set out in the Benchmark Rate Modification Noteholder Notice; and
- (f) [the consent of each Issuer Secured Creditor (other than the Noteholders and the Note Trustee/Representative of Noteholders) whose consent is required to effect the proposed Benchmark Rate Modification pursuant to the provisions of the Transaction Documents and any [Paying Agent] whose responsibility it is to calculate the interest rate has been obtained and no other consents are required to be obtained in relation to the Benchmark Rate Modification; and]
- (g) whether the Benchmark Rate Modification Costs will be paid by the Seller or by the Issuer at paragraph [*insert reference for third party costs and expenses*] of the [Pre-Enforcement Priority of Payments].

**Benchmark Rate Modification Costs** means all fees, costs and expenses (including legal fees or any initial or ongoing costs associated with the Benchmark Rate Modification) properly incurred by the Issuer and the Note Trustee or any other Transaction Party in connection with the Benchmark Rate Modification.

**Benchmark Rate Modification Event** means the occurrence of any of the following:

- (a) the applicability of any law or any other legal provision, or of any administrative or judicial order, decree or other binding measure, pursuant to which EURIBOR may no longer be used as a reference rate to determine the payment obligations under the Notes and/or under the hedging agreements, or pursuant to which any such use is subject to material restrictions or adverse consequences;
- (b) a material disruption to EURIBOR, or EURIBOR ceasing to exist or to be published, or the administrator of EURIBOR having used fallback methodology for calculating EURIBOR for a period of at least 30 calendar days;
- (c) the insolvency or cessation of business of the EURIBOR administrator (in circumstances where no successor EURIBOR administrator has been appointed);

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<sup>13</sup> Consider whether the most junior tranche of Notes held by the originator could be on a different basis.



- (d) a public statement by the EURIBOR administrator that, upon a specified future date (the *specified date*), it will cease publishing EURIBOR or EURIBOR will not be included in the register under Article 36 of the Benchmarks Regulation permanently or indefinitely (in circumstances where no successor EURIBOR administrator has been appointed that will continue publication of EURIBOR or where there is no mandatory administration), provided that if the specified date is more than 6 months in the future, the Benchmark Rate Modification Event will occur upon the date falling 6 months prior to the specified date;
- (e) a public statement by the supervisor of the EURIBOR administrator that EURIBOR has been or will be, upon a specified future date (the *specified date*), permanently or indefinitely discontinued, or which means that EURIBOR may no longer be used or that it is no longer a representative benchmark rate or that its use is subject to restrictions [for issuers of mortgage / asset backed floating rate notes], provided that if the specified date is more than 6 months in the future, the Benchmark Rate Modification Event will occur upon the date falling 6 months prior to the specified date;
- (f) a change in the generally accepted market practice in the publicly listed mortgage-backed or asset backed floating rate notes market to refer to a benchmark rate endorsed in a public statement by [the ECB, ESMA, or any relevant committee or other body established, sponsored or approved by any of the foregoing, including the Working Group on Euro Risk-Free Rates], despite the continued existence of EURIBOR; or
- (g) it being the reasonable expectation of the Issuer (or [the Issuer Cash Manager] acting on behalf of the Issuer) that any of the events specified in sub-paragraphs (a), (b) or (c) will occur or exist within 6 months.

***Benchmark Rate Modification Noteholder Notice*** means a written notice from the Issuer to notify Noteholders of a proposed Benchmark Rate Modification confirming the following:

- (a) the date on which it is proposed that the Benchmark Rate Modification shall take effect;
- (b) the period during which Noteholders [of the Most Senior Class of Notes] who are Noteholders on the Benchmark Rate Modification Record Date may object to the proposed Benchmark Rate Modification (which notice period shall commence at least 40 calendar days prior to the date on which it is proposed that the Benchmark Rate Modification would take effect and continue for a period of not less than 30 calendar days) and the method by which they may object;
- (c) the Benchmark Rate Modification Event or Events which has or have occurred;
- (d) the Alternative Benchmark Rate which is proposed to be adopted pursuant to Condition [X](b) and the rationale for choosing the proposed Alternative Benchmark Rate;
- (e) details of any Note Rate Maintenance Adjustment;
- (f) details of any modifications that the Issuer has agreed will be made to any hedging agreement to which it is a party for the purpose of aligning any such hedging agreement with the proposed Benchmark Rate Modification or, where it has not been possible to agree such modifications with hedging counterparties, why such agreement has not been possible

[and the effect that this may have on the Transaction (in the view of the Rate Determination Agent)]<sup>14</sup>; and

- (g) details of (i) any amendments which the Issuer proposes to make to these Conditions or any other Transaction Document and (ii) any new, supplemental or additional documents into which the Issuer proposes to enter to facilitate the changes envisaged pursuant to this Condition [X].

**Benchmark Rate Modification Record Date** means the date specified to be the Benchmark Rate Modification Record Date in the Benchmark Rate Modification Noteholder Notice.

**Negative Ratings Action** means, in relation to the current rating assigned to any Class of Notes by a Rating Agency, (x) a downgrade, withdrawal or suspension of the rating or (y) any Class of Notes being placed on rating watch negative (or equivalent).

**Note Rate Maintenance Adjustment** means the adjustment (which may be positive or negative) which the Rate Determination Agent proposes to make (if any) to the margin payable on each Class of Notes which are the subject of the Benchmark Rate Modification in order to, so far as reasonably and commercially practicable, preserve what would have been the expected Rate of Interest applicable to each such Class of Notes had no such Benchmark Rate Modification been effected.

**Rate Determination Agent** means the [the Seller][the Servicer] or an independent financial institution of international repute or independent financial adviser with appropriate expertise [(which may be (without limitation) the [Paying Agent])] appointed by the Issuer at its own expense, whose identity, for the avoidance of doubt, shall not need to be approved by the [Note Trustee/Representative of the Noteholders] or the Noteholders.

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<sup>14</sup> To be considered on a deal by deal basis as to whether a party such as the Rate Determination Agent is willing to take on responsibility for working out the effect on the transaction of the hedging not being appropriately modified.