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AUSTRALIAN, CANADIAN OR JAPANESE PERSONS**

Attached are the Fiduciary Contract and Terms and Conditions (the "**Conditions**") relating to the €1,000,000,000 Floating Rate Exchangeable FRESH Bonds due 2099 (the "**Bonds**"). **There will be no offering document in connection with the offering of the Bonds.**

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The Joint Lead Managers and/or their respective employees may hold a position, such as a long or short position or a derivative interest, or act as market maker in the financial instruments of any issuer referred to herein or act as underwriter, placement agent, advisor or lender to such issuer. The Joint Lead Managers may share any fees with their affiliates or third parties.

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Stabilisation/FSA

## Fiduciary Contract

*The following is a description of the Fiduciary Contract (as defined below) which (subject to amendment) will be incorporated into the Global Bond:*

Each Bond is one of the EUR 1,000,000,000 Floating Rate Exchangeable FRESH Bonds due 30 December 2099 divided into bonds (the "**Bonds**") in registered form in the principal amount of EUR 100,000 (the "**Specified Denomination**") each, issued on a fiduciary basis on 16 April 2008, each of which evidences the existence of a fiduciary contract on the terms described below (the "**Fiduciary Contract**") between the holder of such Bond (the "**Holder**") and Bank of New York (Luxembourg) S.A. as fiduciary (the "**Fiduciary**") and each Bond represents the Holder's beneficial interest in a rateable portion of the Fiduciary Assets (as defined below).

The Fiduciary Contract is a "*contrat fiduciaire*" governed by the Luxembourg law of 27 July 2003 on trust and fiduciary contract (the "**Fiduciary Law**") of the Grand-Duchy of Luxembourg ("**Luxembourg**"). The Holder, by accepting the Bonds, has agreed to all the provisions of the Fiduciary Contract applicable to it.

The Fiduciary will have received from the initial Holder(s) of the Bonds as fiduciary assets the subscription monies payable in respect of the Bonds, which subscription monies will be used by the Fiduciary, on a fiduciary basis, in its own name, but at the risk and for the exclusive benefit of the Holders, in the following manner and upon the following terms. The Fiduciary will combine the subscription monies in respect of each Bond and will use the aggregate of such sums to fulfil its obligations (in particular paying upfront an amount of EUR 1,000,000,000) towards J.P. Morgan Securities Ltd. (the "**Counterparty**") under a swap agreement (the "**Swap Agreement**") between the Fiduciary and the Counterparty dated 16 April 2008. Under the terms of the Swap Agreement, the Counterparty is obliged to pay to the Fiduciary all amounts payable, and to deliver all Exchange Property to be delivered, by the Fiduciary under each Bond as and when due pursuant to the terms and conditions of the Bonds (the "**Conditions**") in consideration for the payment on the Issue Date by the Fiduciary to the Counterparty of the subscription monies. The Fiduciary's obligations in respect of each Bond, are conditional upon the due performance by the Counterparty of its obligations to the Fiduciary under the Swap Agreement. The terms of the Counterparty's obligations to the Fiduciary under the Swap Agreement correspond in substance to the Conditions as hereinafter described. Copies of the Swap Agreement will be available for inspection during usual business hours on any banking day at the specified office of the Fiduciary and the Paying and Exchange Agent.

The Conditions constitute the Fiduciary Contract. They set out the rights of the Holders under the Fiduciary Contract and certain duties, powers and discretions of the Fiduciary which correspond to the Swap Agreement. As a fiduciary, the Fiduciary does not and cannot represent the Holders. The Fiduciary undertakes to exercise its rights under the Swap Agreement and its corresponding duties, powers and discretion in the best interests of the Holders and to do so in such a manner as to give effect to the Conditions.

The Fiduciary shall be under no obligation to the Holders other than that of faithful performance of its undertakings, duties, rights and powers and discretions under the Fiduciary Contract as provided for therein or necessarily incidental thereto.

Neither the Fiduciary nor any of its affiliates will be precluded from making any contracts or entering into any business transactions in the ordinary course of their respective businesses with the Counterparty or any person directly or indirectly associated with it or from owning in any capacity any Bonds, and neither the Fiduciary nor any of its affiliates will be accountable to the Holders for any profit resulting therefrom.

Consistent with the Fiduciary Law, Holders have no direct right of action against the Counterparty to enforce their rights under the Bonds or to compel the Counterparty to comply with its obligations under the Swap Agreement, even in the case of the Fiduciary's failure to act or the insolvency of the Fiduciary.

The Fiduciary will, as party thereto, have the benefit of its rights under the Swap Agreement and will hold the Fiduciary Assets as fiduciary assets for the exclusive benefit of the Holders. **"Fiduciary Assets"** means all, present and future, actual and contingent rights and claims of, or assets received by, the Fiduciary under and in connection with the Swap Agreement including the rights thereunder to the Exchange Property (as defined in the Conditions). The Bonds do not constitute direct debt obligations of the Fiduciary and may only be satisfied out of the Fiduciary Assets. Pursuant to the Law, the Fiduciary Assets are segregated from all other assets of the Fiduciary (including from any other fiduciary assets it may hold under other fiduciary contracts with the Holders, fiduciary contracts with the Counterparty or fiduciary contracts with third parties) and are not available to meet the claims of creditors of the Fiduciary other than creditors (including Holders in their capacity as such) whose rights derive from the Fiduciary Assets. The Fiduciary Assets may only be attached by persons whose rights exist as a result of the creation and existence of the Fiduciary Assets. In a liquidation of the Fiduciary, the Fiduciary Assets are not available to the general body of creditors of the Fiduciary.

No commission or other remuneration will be due from the Holders to the Fiduciary for the performance of its services in respect of the Bonds.

## Terms and Conditions of the Bonds

The following, subject to alteration, completion and amendment, are the terms and conditions of the Bonds which will be attached to the Global Bond.

### 1 Definitions

(a) In these Conditions:

**"Accrued Interest"** means, in respect of each Bond, the accrued interest on such Bond at the Interest Rate, calculated by the Paying and Exchange Agent in accordance with the provisions of Condition 4 and rounded, if applicable, to the nearest cent, with half a cent being rounded upwards.

**"Administrative Action"** means any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations).

**"Adjustment Event"** has the meaning provided in Condition 8(b).

**"Agents"** has the meaning provided in Condition 17(b).

**"Automatic Exchange"** means a redemption of the Bonds pursuant to the provisions of Condition 5.

**"Automatic Exchange Date"** has the meaning provided in Condition 5(g)(iii).

**"Automatic Exchange Settlement Date"** has the meaning provided in Condition 5(g)(iii).

**"Bonds"** has the meaning provided in Condition 2(a).

**"Business Day"** means any day, other than a Saturday or a Sunday, on which commercial banks and foreign exchange markets are open for general business in Milan, London and Luxembourg and which is a TARGET Business Day.

**"Calculation Agent"** has the meaning provided in Condition 17(b).

**"Capital Deficiency Event"** will be deemed to have occurred if:

- (i) as a result of losses incurred by the Company, on a consolidated or non-consolidated basis, the total risk-based capital ratio (*coefficiente patrimoniale complessivo*) of the Company, on a consolidated or non-consolidated basis, as calculated in accordance with applicable Italian banking laws and regulations, and either (A) reported in the Company's reporting to the Lead Regulator (currently *Matrice dei Conti*) or (B) determined by the Lead Regulator and communicated to the Company, in either case, falls below the then minimum requirements of the Lead Regulator specified in applicable regulations (currently equal to five per cent. pursuant to the *Nuove Disposizioni di Vigilanza Prudenziale per le Banche*, set out in the Bank of Italy's *Circolare no. 263*, dated 27 December 2006); or
- (ii) the Lead Regulator, in its sole discretion, notifies the Company that it has determined that the Company's financial condition is deteriorating such that an event specified in (i) above is likely to occur in the short term.

**"Capital Distribution"** means, in respect of any Exchange Security:

- (i) any Distribution of assets *in specie* charged or provided for in the financial statements of the issuer of the relevant Exchange Security for any financial period

(whenever paid or made and however described) but excluding a Distribution which gives rise to an adjustment pursuant to Condition 8(b)(iii)(A) and excluding any Tradeable Rights (as defined in Condition 8(b)(ii)); or

- (ii) any cash Distribution charged or provided for in the financial statements of the issuer of the relevant Exchange Security for any financial period (the **"Relevant Financial Period"**) (whenever paid or made and however described) (the **"Relevant Cash Distribution"**) if and to the extent that the sum of the Fair Market Value of the Relevant Cash Distribution and any other cash Distributions on the Exchange Security provided for or charged in the financial statements of the issuer of such relevant Exchange Security in respect of the Relevant Financial Period (other than any part thereof previously deemed to be a Capital Distribution but including any amount per Exchange Security which is reallocated or paid to holders of Exchange Securities by virtue of the fact that the issuer of such relevant Exchange Security holds any such Exchange Securities (or securities of the same class as such Exchange Securities) in treasury or benefits from a right of usufruct (*usufrutto*) or equivalent right in respect of any such Exchange Securities (or securities of the same class as such Exchange Securities), exceeds 5% of the arithmetic average of the Exchange Security Prices in the Relevant Financial Period provided that the Distribution of EUR 0.21 per Share to be paid by the Company in May 2008 in relation to the financial period of the Company ended 30 December 2007 shall not constitute a Capital Distribution.

**"Cash Alternative Election"** has the meaning provided in Condition 7(a).

**"Change in Law or Interpretation Tax Event"** means the receipt by the Issuer or the Counterparty, as the case may be, of an opinion of a nationally recognised law firm or other tax adviser in any Relevant Jurisdiction, as appropriate, experienced in such matters, to the effect that, as a result of (1) any amendment to, or other change (including a change that has been adopted, but which has not yet taken effect) in, the laws or treaties (or any regulations promulgated thereunder) of a Relevant Jurisdiction, or any political subdivision or taxing authority thereof or therein affecting taxation, which amendment or change is effective, or which prospective change is announced, on or after the Issue Date; or (2) a change in the official interpretation of the laws or treaties (or any regulations promulgated thereunder) of any Relevant Jurisdiction or any political subdivision or taxing authority thereof or therein affecting taxation; or (3) an Administrative Action; or (4) any clarification of, or change in the official position or the interpretation of an Administrative Action or any interpretation or pronouncement that provides for a position with respect to an Administrative Action that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental, administrative or regulatory authority or body, irrespective of the manner in which such clarification or change is made known, which Administrative Action, clarification or change is effective, or which notice or announcement is made, on or after the Issue Date, there is a more than an insubstantial risk that (A) the Issuer, the Counterparty or any of their affiliates or the Company is or will be subject to more than a *de minimis* amount of taxes, duties or other governmental charges; (B) if a payment in respect of the Bonds, the Company Swap Agreement or the Swap Agreement then were to be due (whether or not the same is in fact then due) on or before the next Interest Payment Date or Settlement Date, the Issuer, the Counterparty or any of their affiliates or the Company, as the case may be, would be required by applicable law or regulation to make such payment subject to a withholding or deduction for or on account of any taxes, duties, assessments or governmental charges of whatever nature

imposed, levied, collected, withheld or assessed on payments to be made by or on behalf of such person (a **"Withholding"**).

**"Clearing System"** has the meaning provided in Condition 2(c)(ii).

**"Company"** means Banca Monte dei Paschi di Siena S.p.A.

**"Company Event of Default"** has the meaning provided in Condition 14(c).

**"Company Swap Agreement"** has the meaning provided in Condition 3(b).

**"Consolidated Banking Law"** means Legislative Decree No. 385 of 1 September 1993, as amended or supplemented from time to time.

**"Counterparty"** has the meaning provided in Condition 2(a).

**"Counterparty Event of Default"** has the meaning provided in Condition 14(a).

**"Current Market Value"** means, with respect to the Exchange Property per Bond, the current market value thereof on a Trading Day, calculated on the basis of:

- (i) the Exchange Security Price of any Listed Exchange Security included in the Exchange Property on such Trading Day on a per share basis multiplied by the aggregate number of such Exchange Securities included in the Exchange Property per Bond, all as determined by the Calculation Agent;
- (ii) in the case of any Listed Exchange Security and all other assets included in the Exchange Property on such Trading Day for which a value cannot be determined pursuant to paragraph (i) above, their fair market value as determined by the Calculation Agent; and
- (iii) in respect of any Exchange Property Cash included in the Exchange Property on such Trading Day, the amount of such cash on such Trading Day,

in each case converted (if necessary) into euro at the Relevant Rate in effect on the relevant Trading Day, and provided that:

- (x) for the purposes of paragraph (i) above, if such Exchange Security Price is not available on any Trading Day (whether by reason of a suspension of trading in the relevant securities or otherwise) or there is a Market Disruption Event on any such Trading Day, then the Current Market Value of the relevant Exchange Security will be determined in accordance with paragraph (ii) above; and
- (y) for the purposes of paragraphs (i) and (ii) above, if, where applicable, the Trading Day of any Non-Predominant Exchange Security does not fall on the same Trading Day as the Predominant Exchange Security, then the Exchange Security Price of any such Non-Predominant Exchange Security will be calculated using the relevant Exchange Security Price applicable on the first Trading Day for such Non-Predominant Exchange Security immediately preceding the Trading Day for the Predominant Exchange Security.

**"Distributable Profits"** has the meaning provided in Condition 4(b)(vi).

**"Distribution"** means any dividend or distribution, whether of cash, assets or other property, and whenever paid or made and however described (and for the purposes of a distribution of assets includes without limitation an issue of shares or other securities credited as fully or partly paid other, in relation to Condition 8(b)(iii) only, than by way of capitalisation of profits or reserves as set out therein).

"euro" means the currency introduced at the start of the third stage of the European economic and monetary union pursuant to the Treaty establishing the European Community, as amended.

"**Event of Default**" means any of a Counterparty Event of Default or an Issuer Event of Default or a Company Event of Default.

"**Exchange Date**" means the Automatic Exchange Date or the Voluntary Exchange Date or either of them.

"**Exchange Notice**" has the meaning provided in Condition 6(b).

"**Exchange Period**" means, subject to Condition 9(b), the period commencing on and including 27 May 2008 and ending at the close of business on the Business Day that a notice relating to an Automatic Exchange is delivered or at the close of the Business Day falling seven days prior to the Maturity Date, as the case may be.

"**Exchange Price**" per Bond means the price per Predominant Exchange Security implied by dividing the nominal amount of such Bond by the number of Predominant Exchange Securities comprising the Exchange Property per Bond, such Exchange Price being EUR 3.38712 as at the Issue Date.

"**Exchange Property**" means, initially, the Initial Shares, and subsequently such Exchange Securities, Exchange Property Cash and/or other property constituting for the time being the Exchange Property in accordance with these Conditions.

"**Exchange Property Cash**" means any cash for the time being comprised in the Exchange Property.

"**Exchange Property per Bond**" means, with respect to each Bond to be redeemed or exchanged (subject to any Cash Alternative Election in effect at the relevant time), a fraction of the Exchange Property, the numerator of which fraction will be one and the denominator of which will correspond to the total number of Bonds (including the Bond which is the subject of such exchange) which are outstanding at such time (excluding for this purpose the number of Bonds in respect of which any Holder has exercised the Exchange Right but where the relevant Exchange Property has not yet been delivered, as well as such undelivered Exchange Property). The initial Exchange Property per Bond comprises 29,523.607 Shares.

"**Exchange Right**" has the meaning provided in Condition 6(a).

"**Exchange Security**" means any share, option, warrant, bond, debenture or other negotiable or transferable security or instrument forming part of the Exchange Property, subject to adjustment in accordance with these Conditions.

"**Exchange Security Price**" means, in respect of any publicly traded Exchange Security forming part of the Exchange Property on any Trading Day, the volume weighted average price for such Exchange Security on the relevant Trading Day appearing on or derived from Bloomberg screen page AQR (or any successor screen page), rounded to four decimal places (with 0.00005 being rounded up) (or, if no such volume weighted average price is reported, the "*prezzo ufficiale*", closing price or such other price on such day as officially reported by the Stock Exchange). In the absence of a listing on a Stock Exchange, the Calculation Agent will determine the Exchange Security Price on the basis of such quotations or other information as it considers appropriate, and any such determination will (in the absence of manifest error) be final and binding upon all parties.

**"Fair Market Value"** means, with respect to any property on any date, the fair market value of that property as determined by the Calculation Agent provided, that (1) the fair market value of a cash Distribution paid or to be paid shall be the amount of such cash Distribution; (2) where options, warrants or other rights are publicly traded in a market of adequate liquidity, the fair market value of such options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such options, warrants or other rights during the period of five trading days on the relevant market commencing on the first such trading day such options, warrants or other rights are publicly traded, or such shorter period as such options, warrants or other rights are publicly traded, (3) where options, warrants or other rights are not publicly traded (as aforesaid), the fair market value of such options, warrants or other rights will be as determined by the Calculation Agent on the basis of a commonly accepted market valuation method and taking account of such factors as it considers appropriate, and (4) converted into euro (if declared or paid in a currency other than euro) at the spot rate, as determined by the Calculation Agent, at the close of business on that date (or if no such rate is available on that date the equivalent rate on the immediately preceding date on which such a rate is available).

**"Fiduciary Assets"** has the meaning provided in Condition 3(b).

**"Fiduciary Law"** has the meaning provided in Condition 15(a).

**"Final Date"** means, in relation to any Offer, the date upon which the Offer Consideration is made available to the holders of the Exchange Securities.

**"Interest Amount"** has the meaning provided in Condition 4(b)(i).

**"Interest Payment Date"** has the meaning provided in Condition 4(b)(ii).

**"Global Bond"** has the meaning provided in Condition 2(c)(i).

**"Holder"** means the person in whose name a Bond is registered in the Bondholders' Register kept at the registered office of the Issuer.

**"Increased Burden Event"** means the receipt by the Issuer or the Counterparty, as the case may be, of an opinion of a nationally recognised law firm in any Relevant Jurisdiction, experienced in such matters, to the effect that, as a result of (1) any amendment to, or other change (including a change that has been adopted, but which has not yet taken effect) in, the laws or treaties (or any regulations promulgated thereunder) of a Relevant Jurisdiction, or any political subdivision or authority thereof or therein, which amendment or change is effective, or which prospective change is announced, on or after the Issue Date; or (2) a change in the official interpretation of the laws or treaties (or any regulations promulgated thereunder) of any Relevant Jurisdiction or any political subdivision or authority thereof or therein; or (3) any Administrative Action; or (4) any clarification of, or change in the official position or the interpretation of an Administrative Action or any interpretation or pronouncement that provides for a position with respect to an Administrative Action that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental, administrative or regulatory authority or body, irrespective of the manner in which such clarification or change is made known, which Administrative Action, clarification or change is effective, or which notice or announcement is made, on or after the Issue Date, there is a more than an insubstantial risk that the Issuer, the Counterparty or any of their affiliates or the Company is or will be subject to more than a *de minimis* amount of administrative, compliance or regulatory burden or cost in relation to its respective obligations under the Bonds, the Swap Agreement or the Company Swap Agreement, as the case may be.



**"Increased Tax Event"** means the receipt by the Issuer or the Counterparty, as the case may be, of an opinion of any nationally recognised law firm or other tax adviser in any Relevant Jurisdiction, as appropriate, experienced in such matters, to the effect that, as a result of (1) any amendment to, or other change (including a change that has been adopted, but which has not yet taken effect) in, the laws or treaties (or any regulations promulgated thereunder) of a Relevant Jurisdiction, or any political subdivision or taxing authority thereof or therein affecting taxation, which amendment or change is effective, or which prospective change is announced, on or after the Issue Date; or (2) a change in the official interpretation of the laws or treaties (or any regulations promulgated thereunder) of any Relevant Jurisdiction or any political subdivision or taxing authority thereof or therein affecting taxation; or (3) any Administrative Action; or (4) any clarification of, or change in the official position or the interpretation of an Administrative Action or any interpretation or pronouncement that provides for a position with respect to an Administrative Action that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental, administrative or regulatory authority or body, irrespective of the manner in which such clarification or change is made known, which Administrative Action, clarification or change is effective, or which notice or announcement is made, on or after the Issue Date, there is a more than an insubstantial risk that the Issuer, the Counterparty or any of their affiliates or the Company is or will be subject to more than a *de minimis* additional amount of income taxes due to a change or modification of the deductibility of the payments made under the Bonds, the Swap Agreement or the Company Swap Agreement, as the case may be.

**"Initial Shares"** means 295,236,070 Shares constituting the initial Exchange Property.

**"Interest Amount"** has the meaning provided in Condition 4(b).

**"Issue Date"** means 16 April 2008.

**"Issuer"** means The Bank of New York (Luxembourg) S.A.

**"Issuer Event of Default"** has the meaning provided in Condition 14(b).

**"Lead Regulator"** means the Bank of Italy, or any successor entity of the Bank of Italy, or any other competent regulator to which the Company becomes subject as its lead regulator.

**"Listed"** means listed or admitted to trading to a stock exchange of adequate liquidity.

**"Market Disruption Event"** means, in respect of any publicly traded Exchange Security, the occurrence or existence of (i)(a) a Trading Disruption or (b) an Exchange Disruption, in each case on any relevant Trading Day and which the Calculation Agent reasonably determines is material, at any time during such Trading Day, or (ii) an Early Closure.

Where:

**"Early Closure"** means the closure on any Trading Day of the Stock Exchange prior to its scheduled weekday closing time unless such earlier closing time is announced by such Stock Exchange at least one hour prior to the actual closing time for the regular trading session on such Stock Exchange on such Trading Day;

**"Exchange Disruption"** means, in respect of any publicly traded Exchange Security, any event (other than a Trading Disruption or an Early Closure) that disrupts or impairs (in the reasonable opinion of the Calculation Agent) the ability of market participants in general to effect transactions in, or obtain market values for, such Exchange Security on the relevant Stock Exchange; and

**"Trading Disruption"** means, in respect of any publicly traded Exchange Security, any suspension of, or limitation imposed on, trading by the relevant Stock Exchange or otherwise, and whether by reason of movements in price exceeding limits permitted by such Stock Exchange or otherwise relating to such Exchange Security.

**"Maturity Date"** means 30 December 2099.

**"Non-Predominant Exchange Security"** means, where relevant, any Exchange Security other than the Predominant Exchange Security.

**"Offer"** means an offer to the holders of any Exchange Securities, whether expressed as a legal offer, an invitation to treat or in any other way, in circumstances where such offer is available to all holders of the applicable Exchange Securities or all or substantially all such holders other than any holder who is, or is connected with, or is deemed to be acting in connection with, the person making such offer or to whom, by reason of the laws of any territory or requirements of any recognised regulatory body or any stock exchange in any territory, it is determined not to make such an offer.

**"Paying and Exchange Agent"** has the meaning provided in Condition 17(a).

**"Predominant Exchange Security"** means, if at any time there is more than one type or series of Exchange Security in the Exchange Property, such type or series of Exchange Security which the Calculation Agent reasonably considers to represent the largest proportion or weighting in the Exchange Property.

**"Record Date"** has the meaning provided in Condition 10(a).

**"Regulation S"** means Regulation S under the Securities Act.

**"Relevant Jurisdiction"** means Luxembourg, the United Kingdom, the United States or Italy or any of them.

**"Relevant Rate"** means on any day, and, in respect of the conversion of one currency into another currency, the rate of exchange between such currencies appearing on Reuters page ECB 37 on that day, or, if that page is not available or that rate of exchange does not appear on that page on that day, the rate of exchange between such currencies appearing on such other screen or information service, or determined in such other manner, as the Calculation Agent will determine.

**"Securities Act"** means the U.S. Securities Act of 1933, as amended.

**"Settlement Date"** means the Automatic Exchange Settlement Date, the Voluntary Exchange Settlement Date, the Cash Alternative Election Settlement Date or any of them.

**"Settlement Disruption Event"** means an event beyond the control of the Issuer as a result of which any central securities depository cannot settle the book-entry transfer of such securities on such date.

**"Shares"** means the ordinary shares of the Company with a par value of EUR 0.67 each entitling the holders thereof to full dividends for the preceding financial year (to the extent such dividend has not been paid already) and for the then current and all following financial years of the Company and with ISIN IT0001334587.

**"Specified Date"** means, in relation to any Offer, the final date for acceptance of such Offer which, if such Offer is, prior to such final date, extended, will be the final date for acceptance of the extended Offer.

**"Specified Denomination"** has the meaning provided in Condition 2(a).

**"Stock Exchange"** means the Mercato Telematico Azionario (MTA) della Borsa Italiana S.p.A., provided that, except where the context otherwise requires, references to the Stock Exchange will, if Exchange Securities are not listed on the MTA at the relevant time, be construed as references to such other regulated stock exchange located in a major financial centre within the European Union or to any other similarly regulated market on which Exchange Securities are primarily so listed at such time, as selected by the Calculation Agent. If there is more than one, preference will be given to the regulated stock exchange with the highest average trading volume of Exchange Securities.

**"Substitute"** has the meaning provided in Condition 13(a).

**"Swap Agreement"** has the meaning provided in Condition 2(a).

**"TARGET Business Day"** means a day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET) System is operating.

**"Tax Event"** means either a Change in Law or Interpretation Tax Event or an Increased Tax Event.

**"Reuters Screen EURIBOR01 Page"** means the display designated as EURIBOR01 Page" on the Reuters Service (or such other page as may replace EURIBOR01 Page on that service or such other service or services as may be nominated by the European Banking Federation as the information vendor for the purpose of displaying Euro-zone interbank offered rates for euro deposits).

**"Tradeable Rights"** has the meaning provided in Condition 8(b).

**"Trading Day"** means, in respect of any publicly traded Exchange Security forming part of the Exchange Property at the relevant time, any day on which the relevant Stock Exchange is open for trading other than a day on which a Market Disruption Event occurs.

**"Usufruct Agreement"** has the meaning provided in Condition 3(b).

**"Voluntary Exchange"** means an exchange of Bonds at the option of a Holder thereof pursuant to Condition 6.

**"Voluntary Exchange Date"** has the meaning provided in Condition 6(b)(iii).

**"Voluntary Exchange Settlement Date"** has the meaning provided in Condition 6(a).

- (b) References below to **"Conditions"** are, unless the context requires otherwise, to this Condition 1 and the numbered paragraphs below.

## 2 General

### (a) Description

The EUR 1,000,000,000 Floating Rate Exchangeable FRESH Bonds due 30 December 2099 issued on a fiduciary basis by the Issuer are divided into bonds (the "**Bonds**") in registered form in the principal amount of EUR 100,000 (the "**Specified Denomination**") each.

In connection with the Bonds, the Issuer has entered into an agency agreement dated on or around the Issue Date (as amended or supplemented from time to time, the "**Agency Agreement**") with the Paying and Exchange Agent. Copies of the Agency Agreement are available for inspection by Holders during normal business hours at the registered office for the time being of the Issuer or the Paying and Exchange Agent set out below.

The Issuer has also entered into a calculation agency agreement (the "**Calculation Agency Agreement**") with the Calculation Agent on or prior to the Issue Date.

On or prior to the Issue Date, the Issuer and J.P. Morgan Securities Ltd. (the "**Counterparty**") have concluded a swap agreement (the "**Swap Agreement**"). Under the terms of the Swap Agreement, the Counterparty is obliged to pay to the Issuer all amounts payable, and to deliver all Exchange Property to be delivered, by the Issuer under the Bonds as and when due in consideration for the payment on the Issue Date by the Issuer to the Counterparty of the proceeds from the fiduciary issue of the Bonds.

### (b) Exchange

The Bonds will be exchangeable, subject to and in accordance with these Conditions, into their respective entitlements to the Exchange Property. The Exchange Property initially comprises the Initial Shares.

### (c) Form, Title

- (i) Registration of the Bonds is evidenced by a global bond (the "**Global Bond**") in registered form without coupons. The Global Bond will be signed by the authorised signator(ies) of the Issuer and will be authenticated by or on behalf of the Paying and Exchange Agent. Definitive Bonds and interest coupons will not be issued.
- (ii) The Global Bond will be deposited with a depositary common to Clearstream Banking, société anonyme, Luxembourg ("**Clearstream, Luxembourg**") and Euroclear Bank S.A./N.V. ("**Euroclear**") (together the "**Clearing System**") until all obligations of the Issuer under the Bonds have been satisfied.
- (iii) The Issuer shall keep a bondholders' register at its registered office with respect to the Bonds (the "**Bondholders' Register**") in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration and transfers of the Bonds as appropriate. The Issuer at its registered office will act as bond registrar (the "**Bond Registrar**") for the purpose of registering Bonds as herein provided.
- (iv) Title to the Bonds shall pass only by, and be effective upon, registration in the Bondholders' Register.
- (v) The Issuer shall treat the person in whose name a Bond is registered in the Bondholders' Register for the purposes of receiving payments of interest and all

other amounts as well as deliveries of Exchange Property on such Bond, and for all other purposes as the Holder of such Bond.

### 3 Status, Fiduciary Assets

#### (a) Status

The Bonds do not constitute direct obligations of the Issuer and may only be satisfied out of the Fiduciary Assets corresponding to the Fiduciary Contract. The obligations of the Issuer in respect of the Bonds rank equally and without any preference among themselves. Such obligations are conditional upon the due performance by the Counterparty of its obligations under the Swap Agreement and the receipt by the Issuer of all payments and the delivery of all assets thereunder.

#### (b) Fiduciary Assets

The Issuer has the benefit of the Fiduciary Assets. "**Fiduciary Assets**" means all, present and future, actual and contingent rights and claims of, or assets received by, the Issuer under and in connection with the Swap Agreement including the rights thereunder to the Exchange Property. The Issuer will hold any Fiduciary Assets received by it under the Swap Agreement and apply them as provided for in the Fiduciary Contract and the Swap Agreement.

The Swap Agreement provides that, subject as set out below, the Counterparty's obligations under the Swap Agreement are direct obligations of the Counterparty, conditional as set out below, and rank and will rank *pari passu*, without any preference among themselves, with all other outstanding, unsecured and unsubordinated obligations, present and future of the Counterparty other than obligations which are preferred by virtue of mandatory provisions of applicable law.

Subject to applicable law, the Counterparty's payment obligations under the Swap Agreement constitute unsecured obligations of the Counterparty and (including in respect of the delivery of Exchange Property comprising Capital Distributions in the form of cash)) are conditional upon receipt by the Counterparty or any of its affiliates of corresponding payments under a swap agreement entered into by the Company dated 16 April 2008 (the "**Company Swap Agreement**") and an Italian law usufruct agreement entered into by the Company dated 16 April 2008 (the "**Usufruct Agreement**"). The Counterparty's obligations in respect of the delivery of Exchange Property are conditional upon the release of the right of usufrutto under the Usufruct Agreement in respect of a number of shares in the Company equal to the number of Shares comprised in the relevant Exchange Property. The Company's obligations under the Company Swap Agreement and the Usufruct Agreement constitute unsecured and unsubordinated obligations of the Company and rank and will rank *pari passu*, without any preference among themselves, with all other outstanding, unsecured and unsubordinated obligations, present and future of the Company other than obligations which are preferred by virtue of mandatory provisions of applicable law.

#### (c) Early Termination

- (i) If and to the extent any Bonds become due and payable as a result of a Counterparty Event of Default in accordance with Condition 14(a) (such Bonds the "**Defaulted Bonds**"), the Issuer will enforce its rights and claims *vis-à-vis* the Counterparty under the Swap Agreement with respect to the applicable Relevant Portion by requesting payment of any amounts due and delivery of any Exchange

Property to be delivered in the relevant amount, and further may otherwise take possession of the Fiduciary Assets or any property comprised in such Fiduciary Assets or any part thereof. "**Relevant Portion**" means such portion of the Fiduciary Assets that corresponds to the aggregate principal amount of the Defaulted Bonds.

- (ii) The Issuer will not be required to account for anything except actual proceeds of the enforcement of the applicable Relevant Portion of the Fiduciary Assets received by it. The Issuer will not be obliged to pay to the Holders any interest on any proceeds from the enforcement held by it at any time.

The Issuer will not be liable to the Holders in relation to the Fiduciary Assets except in the case of gross negligence or wilful misconduct.

The Issuer will not be required to take any action in relation to the Fiduciary Assets that would involve the Issuer in personal liability or expense unless indemnified to its satisfaction.

- (iii) In case of early termination (in whole or in part), the Issuer will apply all proceeds received in connection with the Fiduciary Assets after deduction of any taxes and/or expenses required to be paid in connection with the enforcement of the Swap Agreement in the following order of priority but, in each case, only to the extent that there are funds available for that purpose and all payments of a higher priority have been made in full:

- (A) **first:** in meeting the claims of the Issuer for the payment of any fees and costs incurred in administering the Fiduciary Assets in accordance with these Conditions and for reimbursement of the costs, expenses and other amounts due to the Issuer (including legal fees) in respect of the Bonds which costs, expenses and other amounts have arisen in connection with the enforcement of the Swap Agreement; and
- (B) **secondly:** in meeting *pro rata* the claims of the relevant Holders under the Defaulted Bonds.

(d) **Limited Recourse; Non Petition**

As a result of the provisions of Condition 3(c) the Issuer may not be able to meet all of its obligations in respect of the Bonds when due.

If the net proceeds of realisation of, or enforcement with respect to, the Fiduciary Assets are not sufficient to discharge all obligations due to the Holders in respect of the Bonds and for the Issuer to meet its obligations, if any, in respect thereof:

- (i) the Issuer will be under no obligation to make any payment or delivery because of any shortfall arising therefrom;
- (ii) all claims in respect of such shortfall will be extinguished;
- (iii) Holders will have no further claim against the Issuer in respect of such unpaid or undelivered amounts; and
- (iv) none of the Holders may institute, or join with any other person in bringing, instituting or joining, insolvency or bankruptcy proceedings (whether court based or otherwise) in relation to the Issuer or its assets, and none of them will have any claim in respect of any sum arising in respect of the Fiduciary Assets for any other obligation of the Issuer. Failure to make any payment in respect of any shortfall will in no circumstances constitute an Event of Default.

## 4 Interest

### (a) General

Each Bond bears interest from and including the Issue Date to but excluding the Exchange Date or, if there is no Exchange Date in respect of such Bond, the Maturity Date, on a floating rate basis as provided below.

### (b) Interest Payments

- (i) Payments of interest ("**Interest Amounts**") on the Bonds with respect to each Interest Period and payments of Accrued Interest will be conditional on payment by the Company of the corresponding payment under the Usufruct Agreement (or, if the Usufruct Agreement has been terminated or expires, under the Company Swap Agreement), and receipt by the Issuer of the corresponding payment(s) under the Swap Agreement. Interest Amounts paid to Holders will be limited to payments received by the Issuer under the Swap Agreement.
- (ii) Interest Amounts will accrue and be payable, subject to paragraph (vi) below, quarterly in arrear on 16 January, 16 April, 16 July and 16 October in each year commencing on 16 July 2008 (each, an "**Interest Payment Date**").
- (iii) Interest Amounts will be calculated as indicated in (iv) below on the basis of the Specified Denomination of EUR 100,000 on a quarterly basis for each such Interest Period, from and including the immediately preceding Interest Payment Date (or from and including the Issue Date with respect to the Interest Amount payable on 16 July 2008) to but excluding the relevant Interest Payment Date (each such period, an "**Interest Period**").
- (iv) Interest Amounts on the Bonds will accrue and be payable, in arrear, quarterly at a rate per annum (the "**Interest Rate**") equal to EURIBOR plus 425 basis points. Interest Amounts will be calculated on the Specified Denomination of EUR 100,000 for the relevant Interest Period on the basis of the relevant Interest Rate for such period on an Actual/Actual Basis. The Paying and Exchange Agent shall determine the Interest Rate on the Determination Date and notify such amount to the Issuer, to the Company and to Holders in accordance with Condition 18 below. If any Interest Payment Date falls on a day that is not a Business Day, such Interest Payment Date will be postponed to the next succeeding day which is a Business Day, unless it would thereby fall in the next calendar month, in which case it will be brought forward to the preceding day that is a Business Day.

"**EURIBOR**" means the rate (expressed as a percentage per annum) for deposits in euro for a period for three months fixed as of 11:00 a.m., Brussels time on the second TARGET Business Day prior to the first day of the related Interest Period (the "**Determination Date**") which appears on the Reuters screen EURIBOR01 Page. If Reuters ceases or fails to publish such a rate:

- (A) the Paying and Exchange Agent shall request, on the Determination Date, the principal euro-zone office of each of four major banks in the euro-zone interbank market, as selected by the Paying and Exchange Agent, to provide the Paying and Exchange Agent with its offered rate for deposits in euros, at approximately 11:00 a.m. Brussels time on such date, to prime banks in the euro-zone interbank market for deposits for a period of three months and for an amount approximately equal to the aggregate principal amount of the outstanding Bonds. If at least two quotations are provided, EURIBOR in

respect of that Determination Date will be the arithmetic average of those quotations;

- (B) if fewer than two quotations are provided, EURIBOR will be the arithmetic average of the rates quoted by four major banks in the euro-zone, as selected by the Paying and Exchange Agent, at approximately 11:00 a.m. Brussels time, on the applicable Determination Date for loans in euro to leading European banks for a period of three months and in a principal amount approximately equal to the aggregate principal amount of the outstanding Bonds; and
- (C) if the banks so selected by the Paying and Exchange Agent are not quoting as mentioned above, EURIBOR for the applicable Interest Period will be the same as EURIBOR for the immediately preceding Interest Period.

**“Actual/Actual Basis”** means:

- (A) If the calculation period is equal to or shorter than the Interest Period during which it falls, the number of days in the calculation period divided by the product of (x) the number of days in the Interest Period and (y) the number of Interest Periods normally ending in any year; and
  - (B) If the calculation period is longer than one Interest Period, the sum of (x) the number of days in such calculation period falling in the Interest Period in which it begins divided by the product of (1) the number of days in such Interest Period and (2) the number of Interest Periods normally ending in any year and (y) the number of days in such calculation period falling in the next Interest Period divided by the product of (1) the number of days in such Interest Period and (2) the number of Interest Periods normally ending in any year.
- (v) All percentages resulting from any calculation regarding Interest Amounts will be rounded to the nearest one hundredth of a percentage point, with five one-thousandths of a percentage point being rounded upwards.
  - (vi) In respect of each Interest Period, the Company is required under the Usufruct Agreement (and, if the Usufruct Agreement is terminated or expires, the Company is required under the Company Swap Agreement) to pay an amount equal to the relevant Interest Amount if (A) the Company has, according to the last available unconsolidated annual accounts (the **“Accounts”**) approved by the Company before the relevant Interest Payment Date (the financial year to which such accounts relate being a **“Relevant Financial Year”**), distributable profits (**“Distributable Profits”**) that would be available for the payment of a Distribution on any class of its share capital (ordinary shares, saving shares, preferred or preference shares) or (B) the Company has declared or paid Distributions on any class of its share capital based on the Accounts; *provided that*, if the aggregate amount of the Company’s Distributable Profits (calculated as aforesaid) and/or its Distributions for the Relevant Financial Year are less than the aggregate of the Interest Amounts falling due in the one-year period following the approval of the Accounts, the Company shall be required to pay only a proportion of the relevant Interest Amount calculated on the basis of the aggregate amount of such Distributable Profits and Distributions for the Relevant Financial Year and the aggregate amount of such Interest Amounts.



Amounts equal to the amount of Accrued Interest otherwise payable upon redemption by exchange of any Bond (other than on the Maturity Date) shall be payable under the Usufruct Agreement (and, if the Usufruct Agreement is terminated or expires, under the Company Swap Agreement) only if and to the extent that Interest Amounts would be payable on the Interest Payment Date following the relevant Exchange Date.

- (vii) Interest Amounts will accrue and be payable, as provided above, on a non-cumulative basis. This means that, except as otherwise set forth below, if amounts corresponding to Interest Amounts are not payable under the Usufruct Agreement (or, following termination or expiry of the Usufruct Agreement, the Company Swap Agreement) in full or in part on any Interest Payment Date in the circumstances described in Condition 4(b)(vi), no Event of Default shall occur as a result thereof and Holders will not, and will have no right to, receive that particular Interest Amount or the unpaid portion of such Interest Amount at any time, even if Interest Amounts are paid in the future.
- (viii) Each Bond will cease to bear interest upon its redemption on the Maturity Date, or if earlier, on the relevant Exchange Date, provided that if delivery of any of the Exchange Property per Bond and/or payment of any amount due is improperly withheld or refused, such Bond will continue to bear interest. In such case, interest will accrue on such Bond in accordance with the provisions of this Condition until the day on which all such Exchange Property per Bond and all sums due in respect of such Bond up to that day are received by or on behalf of the relevant Holder.

(c) **Notice of Non-Payment**

The Issuer shall give notice to Holders in accordance with Condition 18 within 10 Business Days of any Interest Payment Date of the non-payment of any portion of the Interest Amount otherwise due thereon.

## **5 Automatic Exchange**

The Bonds may not be redeemed otherwise than in accordance with this Condition 5, Condition 6, or Condition 14. Redemption pursuant to this Condition 5 is subject to Condition 7.

(a) **Automatic Exchange due to Share Price**

If at any time during the Exchange Period, in the determination of the Counterparty, the Exchange Security Price of the Predominant Exchange Security for 20 or more out of 30 consecutive Trading Days (the “**Calculation Period**”) exceeds 150 per cent. of the Exchange Price deemed to be in effect on each such Trading Day, each Bond will automatically be redeemed in accordance with this Condition 5(a). Within 5 Business Days of the determination by the Counterparty that an Automatic Exchange has occurred in accordance with this Condition 5(a), the Issuer shall give notice that an Automatic Exchange has occurred and of the date thereof to the Holders in accordance with Condition 18. The Issuer will on the Automatic Exchange Settlement Date redeem the Bonds by:

- (i) procuring the delivery on the Automatic Exchange Settlement Date to the Holder in respect of each Bond held by such Holder, of the Exchange Property per Bond as at the Automatic Exchange Settlement Date; and

- (ii) paying on the Automatic Exchange Settlement Date to such Holder in respect of each such Bond any Accrued Interest.

**(b) Early Automatic Exchange following an Event of Default**

Following any notice by a Holder delivered pursuant to Condition 14(a) or pursuant to Condition 14(c), the Issuer will, within 5 Business Days of receipt of such notice, give notice that an Automatic Exchange has occurred and of the date thereof to the relevant Holders in accordance with Condition 18 and will redeem each Defaulted Bond on the Automatic Exchange Settlement Date by:

- (i) procuring the delivery on the Automatic Exchange Settlement Date to the Holder in respect of each Bond held by such Holder, of the Exchange Property per Bond as at the Automatic Exchange Settlement Date; and
- (ii) paying on the Automatic Exchange Settlement Date to such Holder in respect of each such Bond any Accrued Interest.

**(c) Early Automatic Exchange following a Capital Deficiency Event of the Company**

Under the Usufruct Agreement the Company is obliged to notify the Counterparty and the Issuer of the occurrence of a Capital Deficiency Event within 15 Business Days of becoming so aware. The Issuer shall notify Holders of the occurrence of a Capital Deficiency Event and that accordingly an Automatic Exchange has occurred within 5 Business Days of the receipt of any such notification from the Company in accordance with Condition 18 and the Bonds will be redeemed on the Automatic Exchange Settlement Date by:

- (i) procuring the delivery on the Automatic Exchange Settlement Date to the Holder in respect of each Bond held by such Holder, of the Exchange Property per Bond as at the Automatic Exchange Settlement Date; and
- (ii) paying on the Automatic Exchange Settlement Date to such Holder in respect of each such Bond any Accrued Interest.

**(d) Early Automatic Exchange on Non-Equity Offer**

The Issuer will, within 5 Business Days of receiving notice from the Counterparty that the circumstances set out in Condition 9(a) have occurred, give notice that an Automatic Exchange has occurred and of the date thereof to the Holders in accordance with Condition 18 and redeem the Bonds on the Automatic Exchange Settlement Date by:

- (i) procuring the delivery on the Automatic Exchange Settlement Date to the Holder in respect of each Bond held by such Holder, of the Exchange Property per Bond as at the Automatic Exchange Settlement Date; and
- (ii) paying on the Automatic Exchange Settlement Date to such Holder in respect of each such Bond any Accrued Interest.

**(e) Early Automatic Exchange following an Increased Burden Event or a Tax Event**

Following the occurrence of a Tax Event or an Increased Burden Event, the Issuer or the Counterparty, as the case may be, shall within 5 Business Days of receipt of the relevant legal or tax opinion give notice that an Automatic Exchange has occurred and of the date thereof to Holders in accordance with Condition 18 and redeem the Bonds on the Automatic Exchange Settlement Date by:

- (i) procuring the delivery on the Automatic Exchange Settlement Date to the Holder in respect of each Bond held by such Holder, of the Exchange Property per Bond as at the Automatic Exchange Settlement Date; and
- (ii) paying on the Automatic Exchange Settlement Date to such Holder in respect of each such Bond any Accrued Interest.

If the Issuer gives such notice relating to a Change in Law or Interpretation Tax Event under paragraph (B) of the definition of such term, each Bondholder will have the right to elect that his Bond(s) shall not be redeemed on the Automatic Exchange Settlement Date and payment of all amounts in respect of such Bond(s) shall be made subject to the relevant Withholding. To exercise a right pursuant to this Condition 5(e), the relevant Bondholder must, not later than the date falling 8 Business Days after the date of such notice given by the Issuer. (i) have delivered his Bonds to the Paying and Exchange Agent (x) by transferring the Bonds to the Clearing System account of the Paying and Exchange Agent (book entry transfer or assignment) or (y) by an irrevocable instruction to the Paying and Exchange Agent to withdraw the Bonds from the Holder's account at a Clearing System to be debited with such Bonds and an irrevocable authorisation to the Clearing System to effect such debit and (ii) present a duly completed and signed notice of exercise in the form (for the time being current) obtainable from the specified office of the Paying and Exchange Agent (a **'Bondholder's Exercise Notice'**) at the specified office of the Paying and Exchange Agent.

(f) **Automatic Exchange at Maturity**

Unless otherwise previously redeemed and exchanged or purchased and cancelled in accordance with these Conditions, the Issuer will, within 5 Business Days of the Maturity Date, give notice that an Automatic Exchange has occurred and of the date thereof to the Holders in accordance with Condition 18 and redeem the Bonds on the Automatic Exchange Settlement Date by:

- (i) procuring the delivery on the Automatic Exchange Settlement Date to the Holder in respect of each Bond held by such Holder, of the Exchange Property per Bond as at the Automatic Exchange Settlement Date; and
- (ii) paying on the Automatic Exchange Settlement Date to such Holder in respect of each such Bond any Accrued Interest.

(g) **Procedure for Automatic Exchange**

On receipt of notice from the Issuer or Counterparty, as the case may be, in accordance with this Condition 5, each Holder must deliver a duly executed notice in, or substantially in, the form set forth in the Agency Agreement (each an **"Automatic Exchange Notice"**) to the specified office of the Paying and Exchange Agent.

- (i) The following information will be included in the Automatic Exchange Notice:
  - (A) in the case of Exchange Securities, the number and account name of the security account(s) at the clearing system through which such Exchange Securities are cleared (for the Initial Shares, the clearing system managed by Monte Titoli S.p.A.) and which is to be credited with any such Exchange Securities or, in the case of any Exchange Securities that are not cleared through a clearing system, the address to which any relevant certificates are to be sent, uninsured and at the risk of the relevant Holder;

- (B) the number and account name of a euro account to which any cash is to be paid by or on behalf of the Issuer and from which any expenses payable by the Holder pursuant to Condition 7(c)(iv) will be debited, such Automatic Exchange Notice constituting authorisation of such debit by the exchanging Holder;
  - (C) that the Holder represents and warrants that, at the time of signing and delivery of the Automatic Exchange Notice, (A) he understands that the Shares and/or any other part of the Exchange Property to be transferred upon redemption of the Bonds have not been registered under the Securities Act and (B) he is not a U.S. person nor acting for the account or benefit of a U.S. person (as defined in Regulation S) and is located outside the United States within the meaning of Regulation S, is acquiring the Shares and/or any other part of the Exchange Property to be transferred upon redemption of the Bonds in an offshore transaction (as defined in Regulation S) in accordance with Rule 903 of Regulation S and understands that the Shares and/or any other part of the Exchange Property may not be delivered within the United States upon redemption of the Bonds and may not be resold in the United States except pursuant to an exemption from the registration requirements of the Securities Act. **Failure to deliver such certifications and undertakings will make the Automatic Exchange Notice to which they relate invalid and no Exchange Property or cash will be delivered in respect thereof;** and
  - (D) that such Holder authorises the production of such Automatic Exchange Notice in any applicable administrative or legal proceedings.
- (ii) Automatic Exchange will further require that the Bonds to be exchanged be delivered to the Paying and Exchange Agent (x) by transferring the Bonds to the Clearing System account of the Paying and Exchange Agent (book entry transfer or assignment) or (y) by an irrevocable instruction to the Paying and Exchange Agent to withdraw the Bonds from the Holder's account at a Clearing System to be debited with such Bonds and an irrevocable authorisation to the Clearing System to effect such debit.
  - (iii) In relation to any Automatic Exchange pursuant to this Condition 5, the Trading Day immediately following the date on which the last of the prerequisites specified in Condition 5(g)(i) and (ii) has been fulfilled shall be the "**Automatic Exchange Date**". The "**Automatic Exchange Settlement Date**" shall be the date falling no later than 10 Business Days' following the Automatic Exchange Date.
  - (iv) Once delivered to the Paying and Exchange Agent, an Automatic Exchange Notice will be irrevocable. Any determination as to whether any purported Automatic Exchange Notice has been duly completed and properly delivered will be made by the Paying and Exchange Agent and will, save in the case of a manifest error, be conclusive and binding on the Issuer, the Paying and Exchange Agent and the relevant Holder.

## 6 Exchange Rights

### (a) Voluntary Exchange by Holders

At any time during the Exchange Period, and except as otherwise provided herein, each Holder will have the right (the "**Exchange Right**") to have each of his Bonds redeemed by exchange for the Exchange Property per Bond as at the Voluntary Exchange Date. In this case the Issuer will, subject to Condition 7, redeem such Bond on a date no later than 10 Business Days following the

Voluntary Exchange Date (the **Voluntary Exchange Settlement Date**) by delivering to the Holders in respect of each Bond the subject of any such exercise the Exchange Property per Bond as at the Voluntary Exchange Settlement Date.

(b) **Procedure for Voluntary Exchange**

Each Holder may exercise his Exchange Right in respect of any of his Bonds during the Exchange Period by delivering a duly executed exchange notice in, or substantially in, the form set forth in the Agency Agreement (each an **"Exchange Notice"**) to the specified office of the Paying and Exchange Agent.

- (i) The following information will be included in the Exchange Notice:
- (A) the name and address (in the case of natural persons) or name, domicile and address (in the case of legal persons) of the Holder;
  - (B) the number and aggregate principal amount of Bonds being exchanged;
  - (C) that the Holder represents and warrants that the Bonds to be exchanged are owned by it (or a person for whose account it holds the Bonds) free from all liens, charges, encumbrances and other third party rights;
  - (D) in the case of Exchange Securities, the number and account name of the securities account(s) at the clearing system through which such Exchange Securities are cleared (for the Initial Shares, the clearing system managed by Monte Titoli S.p.A.) and which is to be credited with any such Exchange Securities or, in the case of any Exchange Securities that are not cleared through a clearing system, the address to which any relevant certificates are to be sent, uninsured and at the risk of the relevant Holder;
  - (E) the number and account name of a euro account to which any cash is to be paid by or on behalf of the Issuer and from which any expenses payable by the Holder pursuant to Condition 7(c)(iv) and arising out of the exercise of his Exchange Right as set forth in the Exchange Notice will be debited, such Exchange Notice constituting authorisation of such debit by the exchanging Holder;
  - (F) that the Holder represents and warrants that, at the time of signing and delivery of the Exchange Notice, (A) he understands that the Shares and/or any other part of the Exchange Property to be transferred upon redemption of the Bonds have not been registered under the Securities Act and (B) he is not a U.S. person nor acting for the account or benefit of a U.S. person (as defined in Regulation S) and is located outside the United States within the meaning of Regulation S, is acquiring the Shares and/or any other part of the Exchange Property to be transferred upon redemption of the Bonds in an offshore transaction (as defined in Regulation S) in accordance with Rule 903 of Regulation S and understands that the Shares and/or any other part of the Exchange Property may not be delivered within the United States upon redemption of the Bonds and may not be resold in the United States except pursuant to an exemption from the registration requirements of the Securities Act. **Failure to deliver such certifications and undertakings will make the Exchange Notice to which they relate invalid and no Exchange Property or cash will be delivered in respect thereof;** and

- (G) that such Holder authorises the production of such Exchange Notice in any applicable administrative or legal proceedings.
- (ii) The exercise of the Exchange Right will further require that the Bonds to be exchanged be delivered not later than on the last day of the Exchange Period to the Paying and Exchange Agent (x) by transferring the Bonds to the Clearing System account of the Paying and Exchange Agent (book entry transfer or assignment) or (y) by an irrevocable instruction to the Paying and Exchange Agent to withdraw the Bonds from the Holder's account at a Clearing System to be debited with such Bonds and an irrevocable authorisation to the Clearing System to effect such debit.
- (iii) The Exchange Right will be validly exercised on the Trading Day immediately following the date on which the last of the prerequisites specified in Condition 6(b)(i) and (ii) for the exercise of the Exchange Right has been fulfilled (the "**Voluntary Exchange Date**"), provided that if the last of those prerequisites is fulfilled in the eight Trading Day period preceding the date of any general meeting of shareholders of the Company, the Voluntary Exchange Date shall be the Trading Day following the date of such general meeting.
- (iv) Once delivered to the Paying and Exchange Agent, an Exchange Notice will be irrevocable. Any determination as to whether any purported Exchange Notice has been duly completed and properly delivered will be made by the Paying and Exchange Agent and will, save in the case of a manifest error, be conclusive and binding on the Issuer, the Paying and Exchange Agent and the relevant Holder.

## **7 Cash Alternative Election, Settlement and Other Miscellaneous Provisions**

### **(a) Cash Alternative Election**

The Issuer may upon the Automatic Exchange of the Bonds or upon the exercise of the Exchange Right by a Holder pursuant to Condition 6 make an election to satisfy its obligations relating to the Bonds to be exchanged by paying to the Holder a cash amount (a "**Cash Alternative Election**"). To exercise the Cash Alternative Election the Issuer must give notice (a "**Cash Alternative Election Notice**") to the Holders of its election forthwith upon receipt by it of the corresponding election notice from the Counterparty.

In the case of an exchange of the Bonds pursuant to Condition 5, the Issuer must, at the time of giving notice of Automatic Exchange pursuant to such Condition, give the Cash Alternative Election Notice to the Holders in accordance with Condition 18.

In the case of an exercise of the Exchange Right by a Holder pursuant to Condition 6 the Issuer must give the Cash Alternative Election Notice to the exercising Holder (in writing, by fax, by telephone, or otherwise using the address stated in the Exchange Notice) not later than on the fifth Business Day following the Voluntary Exchange Date.

The day on which such notification is published or despatched, as the case may be, by the Issuer is hereinafter referred to as the "**Cash Alternative Election Notice Day**". Failure to give a Cash Alternative Election Notice will be deemed to be an election by the Issuer not to make a Cash Alternative Election.

The Issuer will pay to the relevant Holder or Holders an amount per Bond in cash equal to the Cash Alternative Election Current Market Value of the Exchange Property per Bond on

the Cash Alternative Election Settlement Date. No interest will be payable with respect to any such cash amount.

**"Cash Alternative Election Current Market Value"** is an amount per Bond equal to the arithmetic average of the Current Market Values on each Trading Day in the relevant Cash Alternative Election Calculation Period calculated by the Calculation Agent.

**"Cash Alternative Election Calculation Period"** means the period of 10 consecutive Trading Days commencing on a date specified in the Cash Alternative Election Notice, provided that in the case of an Automatic Exchange pursuant to Condition 5 such period shall not start later than on the 10th Trading Day following the Cash Alternative Election Notice Day.

**"Cash Alternative Election Settlement Date"** means the 5th Business Day following the end of the Cash Alternative Election Calculation Period.

(b) **Settlement**

The Calculation Agent will notify the Issuer and the Paying and Exchange Agent of the Exchange Property per Bond which the Issuer will be required to transfer to each Holder pursuant to Condition 5 or Condition 6, as well as, where applicable, any cash amount due to each Holder.

Not later than the relevant Settlement Date or Maturity Date the Issuer will procure the transfer to the relevant Holders of the Exchange Property per Bond and any cash amount in respect of all Bonds being redeemed. The Issuer will make such transfer in respect of any Exchange Property comprising Exchange Securities or cash to such securities and/or cash accounts and otherwise as specified in the relevant Exchange Notice.

(c) **Miscellaneous provisions applicable to both Automatic Exchange and Voluntary Exchange**

(i) **Settlement Disruption Event**

If a Settlement Disruption Event occurs on the Settlement Date or Maturity Date and delivery of any Exchange Securities cannot be effected on such date, then solely for purposes of this Condition 7(c)(i), the Settlement Date with respect to such Exchange Securities will be postponed until the first succeeding calendar day on which delivery can take place through a national or international settlement system or in any other commercially reasonable manner.

(ii) **Exchange Property Record Date**

(A) A Holder will, upon redemption of each Bond, be deemed to be a holder of record on the Voluntary Exchange Date (in the case of a Voluntary Exchange) or the Automatic Exchange Date (in the case of an Automatic Exchange ) of all Exchange Securities and/or the owner of any other property or assets included in the Exchange Property and, in each case, comprised in the Exchange Property per Bond.

(B) If an Adjustment Event occurs during the period from but excluding the Voluntary Exchange Date or the Automatic Exchange Date, as the case may be, to and including the Settlement Date (as extended pursuant to Condition 7(c)(i)) which would have resulted in an adjustment to the Exchange Property per Bond to be delivered to any Holder upon redemption of any Bond had such Adjustment Event occurred prior to the Voluntary Exchange Date or Automatic

Exchange Date, as the case may be, the Issuer will (unless it is able to confer on or deliver to such Holder an irrevocable entitlement to or in respect of any additional Exchange Property arising from such adjustment), subject to Conditions 3(c) and 3(d), deliver, or procure the delivery of, such additional Exchange Property per Bond, as soon as reasonably practicable after receipt thereof, to such Holder in accordance with the provisions of Condition 7.

(iii) **Release of Exchange Property**

Upon delivery of Exchange Property pursuant to these Conditions or upon any purchase and cancellation of the Bonds,

(A) the Exchange Property per Bond in respect of the relevant Bonds will cease to be part of the Exchange Property; and

(B) the Exchange Property will be reduced accordingly.

In the case of a purchase and cancellation of any Bonds, the Exchange Property per Bond in respect of the relevant Bonds will be retained by the Issuer.

(iv) **Taxes or Duties**

Each Holder will be responsible for the payment of any and all stamp, transfer, registration or other taxes or duties (if any) arising on the exercise of Exchange Rights and on the transfer, delivery or other disposal of Exchange Property by the Issuer and all other out-of-pocket expenses of the Issuer and the Paying and Exchange Agent in connection with the delivery of any Exchange Property. None of the Issuer or the Paying and Exchange Agent will impose any charge upon the exercise of Exchange Rights.

(v) **Fractions Arising on Exchange**

No fraction of an Exchange Security or any other property comprising the Exchange Property which is not divisible will be delivered on redemption of the Bonds, and any such fraction will be rounded down to the nearest whole multiple of an Exchange Security or unit of any such other property. In the case of a fractional Exchange Security, the Issuer will not be required to compensate any such fractional Exchange Security in cash. If more than one Bond is to be exchanged by a Holder pursuant to any one Exchange Notice, the Exchange Property to be delivered to that Holder shall be calculated on the basis of the aggregate principal of such Bonds.

(vi) **Transfer of Title to the Shares**

Transfer of title to the Shares is effected through the clearing system managed by Monte Titoli S.p.A. and, in particular, by debiting the security account of the transferor in favour of the transferee, in accordance with the provisions of Law no. 213 of 24 June 1998, and the related implementing regulations (including regulation no. 11768 issued by CONSOB on 23 December 1998, as from time to time amended and supplemented).

(vii) **Inability to Deliver Exchange Property**

If, at any time when the transfer or delivery of any Exchange Property is required, (i) such a transfer or delivery would, as certified by the Counterparty, be unlawful under the laws of any applicable jurisdiction or contrary to any official declaration, order, directive or regulation in any applicable jurisdiction, and (ii) the Issuer has



used all commercially reasonable efforts to effect delivery of such Exchange Property, the relevant Settlement Date shall be postponed until the first Business Day on which such transfer or delivery is certified by the Counterparty to be possible.

## **8 Exchange Property Adjustments**

The following provisions will govern the composition of the Exchange Property as of any date of determination.

### **(a) Initial Exchange Property**

The Exchange Property will initially comprise the Initial Shares and will be subject to adjustment only in accordance with Condition 8(b).

### **(b) Adjustment Events**

The composition of the Exchange Property will be adjusted upwards or downwards as follows under the following circumstances (each an "**Adjustment Event**") as if the Issuer was the holder of the relevant Exchange Property:

#### **(i) Subdivision, Consolidation or Reclassification**

If there will have occurred a subdivision, consolidation or reclassification of any Exchange Securities or any other Exchange Property, then the securities or assets resulting from such subdivision, consolidation or reclassification, so far as attributable to the Exchange Securities or to such other Exchange Property, will be included in the Exchange Property.

#### **(ii) Rights Issues**

If further Exchange Securities or any other Exchange Property, or options, warrants or rights to subscribe, purchase or acquire, or convert into, Exchange Securities or any other Exchange Property will be offered by way of rights to holders of Exchange Securities or the owners of such other Exchange Property (each a "**Rights Issue**"), then (provided that it is possible to transfer such rights under applicable law and/or the terms of the Rights Issue (rights so tradeable, "**Tradeable Rights**")) the Issuer shall, within 3 Business Days of receipt of notification of the existence of a Rights Issue, give notice (a "**Rights Issue Notification**") of such Rights Issue to Holders, together with an indication as to where further information relating to the Rights Issue may be obtained, in accordance with Condition 18. Each Holder of a Bond shall, subject to the terms of the Rights Issue, be entitled to receive from the Issuer such number of Tradeable Rights as are attributable to the Exchange Property per Bond by delivering a notice (a "**Rights Notice**") to the specified office of the Paying and Exchange Agent stating the details of the securities account to which it wishes such Tradeable Rights to be credited and providing any other details or customary certifications specified in the relevant Rights Issue Notification.

If a Holder does not deliver a Rights Notice within the period specified in the relevant Rights Issue Notification then its entitlement to receive the relevant Tradeable Rights shall lapse with no liability arising for the Issuer or the Counterparty.

For the avoidance of doubt, and without prejudice to the terms of this Condition 8(b)(ii), there will be no obligation on the Issuer or the Counterparty to hold the

Exchange Property or any other securities entitling it to subscribe rights offered to it in any Rights Issue. To the extent that any such rights are not Tradeable Rights, there will be no addition to the Exchange Property in the event of a Rights Issue.

(iii) **Bonus Issues, Capital Distributions and Reorganisations**

If any one of the following occurs:

- A.** Exchange Securities or other securities are issued credited as fully paid to holders of Exchange Securities or the owners of such other Exchange Property by way of capitalisation of profits or reserves or in lieu of the whole or any part of any cash Distributions or interest under such Exchange Securities or such other Exchange Property;
- B.** any Capital Distributions (other than securities by way of a bonus issue as described in Condition 8(b)(iii)(A) and other than Capital Distributions paid or made in cash) are distributed or made to holders of Exchange Securities or the owners of such other Exchange Property;
- C.** pursuant to any scheme of arrangement, reorganisation, amalgamation, merger, demerger or reconstruction of any company or companies (whether or not involving liquidation or dissolution), any further shares or other securities, any evidence of indebtedness or assets (including cash) are issued, transferred or distributed to holders of Exchange Securities,

then, subject as provided below in this Condition 8(b)(iii), such shares, other securities, Capital Distributions, evidences of indebtedness, cash or other assets received in relation to the relevant event, so far as attributable to the Exchange Property, will be included as part of the Exchange Property with effect from and including the date of such issue, distribution or transfer.

To the extent that any such bonus issue, Capital Distribution or re-organisation as is mentioned above results in the addition to the Exchange Property of assets (including cash) that do not comprise Listed Predominant Exchange Securities and, together with other assets already part of the Exchange Property that also do not comprise such Predominant Exchange Securities, if in the opinion of the Calculation Agent it is practicable to do so, the Counterparty shall realise such assets and shall apply the resulting proceeds of such sale (less the costs and expenses incurred in such disposal and the ensuing acquisition) together with any Exchange Property Cash in purchasing the maximum number practicable of the Listed Predominant Exchange Securities, which with effect from the date of such purchase will form part of the Exchange Property.

In the event that any Capital Distribution is paid in cash, such Capital Distribution will not be added to the Exchange Property. Instead the Issuer shall, if and to the extent the Company has performed its obligations under the Company Swap Agreement in relation to the relevant cash amounts and the corresponding amounts have been received by the Issuer under the Swap Agreement, pay, as soon as reasonably practicable following the payment of the relevant Capital Distribution, to the Holder of each Bond an amount equal to a fraction of the aggregate Capital Distribution in respect of the Exchange Securities comprised in the Exchange Property, the numerator of which fraction will be one and the denominator of which will correspond to the total number of Bonds which are outstanding at such time.

(iv) **Other Adjustment Events**

If the Calculation Agent determines that an adjustment should be made to the Exchange Property as a result of one or more events or circumstances not referred to in Condition 8(b)(i), (ii) or (iii) (even if the relevant event is, or circumstances are, specifically excluded from the operation of Condition 8(b)(i), (ii) or (iii)), the Calculation Agent will determine as soon as practicable what adjustment (if any) to the Exchange Property is fair and reasonable to take account of such event(s) or circumstance(s) and the date on which such adjustment should take effect in accordance with such determination.

(c) **Notice**

The Issuer will give notice to the Holders in accordance with Condition 18 of any change (or, at the Issuer's discretion, any prospective change) in the composition of the Exchange Property as soon as reasonably practicable following such change (or, if the notice is given in respect of a prospective change, at such time as the Issuer will determine), including details of the Exchange Property per Bond following such change.

(d) **Determination**

If any doubt arises as to whether an Adjustment Event has occurred, or as to the adjustment to be made to the composition of the Exchange Property or as to the Exchange Property per Bond, a determination by the Calculation Agent in respect thereof will (save in the case of manifest error) be final and binding on the Issuer, the Holders and the other Agents.

(e) **Voting Rights in respect of the Exchange Property**

The Holders will have no voting or other rights (including rights to Distributions) attaching to any Exchange Security or any other Exchange Property prior to exchange.

(f) **Maintenance of Exchange Property**

If and to the extent that neither the Issuer nor the Counterparty at any time owns Exchange Property sufficient to satisfy Automatic Exchange under Condition 5, redemption under Condition 14 or Voluntary Exchange under Condition 6 in respect of all outstanding Bonds, references in these Conditions to Exchange Securities, securities, property or assets (including cash) and/or consideration (an "**Entitlement**") received or entitled to be received by the Issuer in respect of the Exchange Property or any part thereof (howsoever expressed) shall operate as if the Issuer and/or the Counterparty had received or was entitled to receive the relevant Entitlement and, where appropriate, the Exchange Property shall be increased and added to as if at all relevant times the Issuer owned the Exchange Property (or the relevant part thereof) and had received or was entitled to receive the relevant Entitlement on the date it would have received or have been entitled to receive such Entitlement had it at all relevant times been the owner of the Exchange Property (or the relevant part thereof), and references in these Conditions to the Exchange Property and to the Exchange Property being added to or increased (howsoever expressed) shall be construed accordingly.

## **9 General Offers**

(a) **Acceptance of Offers**

Pursuant to the Swap Agreement, in the event of an Offer for any Exchange Security, the Counterparty will have absolute discretion to accept such Offer (and as to any alternative

consideration) or reject such Offer, provided that (i) the Counterparty will not accept such Offer (A) prior to the Specified Date in respect thereof and (B) unless the value of the consideration offered for such Exchange Security pursuant to the Offer (the "**Offer Consideration**") is equal to or greater than the value of such Exchange Security, and (ii), subject as provided in (i) above, where the terms of the Offer are such that the Counterparty may decide whether to accept the Offer Consideration in the form of cash or securities or an alternative form of Offer Consideration, if the Counterparty accepts the Offer, the Counterparty will accept the type of Offer Consideration which has the highest value. For the avoidance of doubt, (x) the Counterparty may announce its intention, to accept any Offer prior to the Specified Date, and (y) if there are two simultaneous Offers, the Counterparty may accept either Offer (including the Offer which includes the lower Offer Consideration) or neither Offer. The value of any Offer Consideration will be determined by the Calculation Agent. The election of the Counterparty will be binding on the Issuer.

If the Counterparty accepts such Offer (or, if the Exchange Securities are subject to compulsory acquisition), then, with effect from the Final Date, the Exchange Property will consist, in whole or in part, of the Offer Consideration, or the consideration received pursuant to such compulsory acquisition as if the Issuer was the holder of the relevant Exchange Property.

Any cash amount included in the Offer Consideration in respect of any Exchange Property and to be added to and form part of the Exchange Property will be applied, subject as provided, as soon as practicable (including any interest earned thereon and net of any costs and expenses incurred) by the Counterparty to the extent practicable in purchasing equity securities of the person making the Offer, provided such equity securities are Listed, which will be added to and form part of the Exchange Property as if the Issuer was the holder of the relevant Exchange Property.

If any Offer Consideration is not in the form of Listed equity securities of the person making the offer or cash, the Counterparty shall realise, to the extent practicable, such assets and the resulting proceeds of such sale (net of any costs and expenses incurred in such disposal and the ensuing acquisition) shall be applied, to the extent practicable, by the Counterparty in purchasing the maximum number practicable of such Listed equity securities which will be added to and form part of the Exchange Property as if the Issuer was the holder of the relevant Exchange Property.

If the equity securities of the person making the Offer are not Listed or if such purchase is otherwise, in the opinion of the Calculation Agent, not practicable, the Counterparty shall apply any cash amount included in the Offer Consideration and any cash from the sale of any assets according to the above paragraph in purchasing Listed equity securities which, in the sole opinion of the Calculation Agent, preserve as near as practicable the economic interest of the Holders.

If the above is not possible or if, as a result of the Offer the Company Swap Agreement is no longer enforceable or the person making the Offer claims that the Company Swap Agreement is not enforceable, the Bonds shall be redeemed in accordance with Condition 5(d).

Except for Offers made pursuant to compulsory acquisitions in accordance with applicable legislation, the Counterparty will not accept any Offer in respect of such part of the Exchange Property which would be deliverable to those Holders who have exercised Exchange Rights in respect of Bonds prior to the suspension of the Exchange Rights as provided below.

The Counterparty will at all times be entitled at its discretion, in relation to any shares or other securities owned or controlled by it or in respect of which it is entitled to exercise voting rights (whether or not such shares or securities comprise Exchange Property), to vote on, exercise its rights in respect of, or otherwise participate in (or in any such case refrain from doing so), any scheme of arrangement, reorganisation, amalgamation, merger, demerger or reconstruction of any company or companies (whether or not involving liquidation or dissolution), as it thinks fit.

**(b) Suspension of Exchange Rights**

The Exchange Rights will be suspended:

- (i) from and including the date falling 5 Business Days prior to the Specified Date (assuming the date then scheduled to be the Specified Date will in fact be the Specified Date) to and including the date on which the acceptance of the relevant Offer is withdrawn or the relevant Offer lapses or becomes or is declared unconditional in all respects; and
- (ii) from and including the date on which any vote is cast in relation to any applicable scheme referred to in Condition 9(a) above, which is approved by the required majority, to and including the date on which the same is approved or rejected by any relevant judicial or other authority or otherwise is or becomes or is declared to be effective or the like.

Notice of any such period of suspension (including the commencement and termination thereof) will be given by the Issuer to the Paying and Exchange Agent and to the Holders in accordance with Condition 18.

**10 Payments**

- (a) On the respective due date the Issuer will make all payments and deliveries, as the case may be, on the Bonds in accordance with these Conditions to, or to the order of, the person shown as the Holder in the Bondholders' Register at the opening of business in the place of the specified office of the Issuer on the Record Date for on-payment to the Clearing System or to its order for credit to the accounts of the relevant accountholders of the Clearing System outside the United States. "**Record Date**" means the second calendar day before the due date for such payment or delivery, as the case may be.
- (b) The Issuer will be discharged by payment and delivery, as the case may be, to, or to the order of, the Clearing System.
- (c) If the date for payment of any amount in respect of the Bonds is not a Business Day then the Holder will not be entitled to payment until the next day which is a Business Day. The Holder will not be entitled to further interest or other payment in respect of any such delay.
- (d) All payments in respect of the Bonds are subject in all cases to any applicable fiscal or other laws and regulations.

**11 Repurchase of Bonds**

The Issuer, the Counterparty or any of their respective subsidiaries or affiliates, may at any time purchase Bonds at any price in the open market or in privately negotiated transactions, provided that such purchases are in compliance with applicable laws. Bonds which are so purchased may be cancelled or may be reissued or resold.

## 12 Withholding Taxes

All payments of Interest Amounts and all other amounts in respect of the Bonds by or on behalf of the Issuer will be made free and clear of, and without withholding or deduction for, any taxes, duties, assessments or governmental charges of whatever nature imposed, levied, collected, withheld or assessed on payments to be made by or on behalf of the Issuer by or within Luxembourg or any political subdivision thereof or any authority therein or thereof having power to tax or of any other jurisdiction, unless such withholding or deduction is required by law. The Issuer will not be required to pay any additional or further amounts in respect of such deduction or withholding.

## 13 Resignation of the Issuer

- (a) The Issuer may resign as fiduciary by giving at least 90 days' notice to the Holders in accordance with Condition 18. No such resignation will take effect until a successor fiduciary (which shall be a Qualified Financial Institution) (the "**Substitute**") has simultaneously with such resignation been appointed by the Issuer, such Substitute has been approved by the Counterparty, and such Substitute has accepted such appointment and the Fiduciary Assets have been transferred to the Substitute and the Substitute has assumed the rights and obligations of the Issuer under the Bonds. The resigning Issuer will notify the Holders as soon as practicable of any such change or proposed change in accordance with Condition 18.
- (b) For the purpose hereof, "**Qualified Financial Institution**" means an entity incorporated under the laws of Luxembourg which:
  - (i) is qualified and authorised to act as a fiduciary under Luxembourg law; and
  - (ii) has itself or is part of a group which has a long-term debt rating by Standard & Poor 's Rating Services of a least "A" and/or Moody's Investors Service, Inc of at least "A3".

The notice to the Holders shall contain particulars confirming that the appointed Substitute is a Qualified Financial Institution.

- (c) In the event a Substitute is appointed, the Issuer shall deliver to the Substitute all properties and money in its possession in respect of the Fiduciary Contract, and provide sufficient information to allow the Substitute to perform its obligations under the Bonds, the Fiduciary Contract, the Calculation Agency Agreement and the Agency Agreement, and after all amounts due to the Issuer have been paid.
- (d) In case of such substitution all references in these Conditions to the "Issuer" will relate to the Substitute and all references to the jurisdiction of the Issuer will relate to the jurisdiction in which the Substitute has its incorporation or its residence for tax purposes.
- (e) A substitution in accordance with this Condition 13 will be published in accordance with Condition 18.

## 14 Events of Default

- (a) If one or more of the following events (each a "**Counterparty Event of Default**") will have occurred and is continuing, any Holder may give written notice to the Issuer at its registered office that any Bond held by such Holder is exchangeable, whereupon such Bond will be exchanged in accordance with Condition 5(b), unless such Counterparty

Event of Default will have been cured by the Counterparty or waived by the relevant Holder(s) prior to receipt of such notice by the Issuer:

- (i) subject to Condition 3(b) the Counterparty fails to pay any amount of interest or any other amount or to deliver any amount of Exchange Property under the Swap Agreement when due and such failure continues unremedied for a period of 30 days; or
  - (ii) the Counterparty does not perform or comply with any one or more of its other obligations under the Swap Agreement which default is incapable of remedy or is not remedied within 60 days after notice of such default shall have been given to the Counterparty by the Issuer; or
  - (iii) the Counterparty is insolvent or bankrupt or unable to pay its debts, stops, suspends or threatens to stop or suspend payment of all or a material part of (or of a particular type of) its debts; or
  - (iv) an administrator is appointed, an order is made or an effective resolution passed for the winding-up or dissolution or administration of the Counterparty, or the Counterparty ceases or threatens to cease to carry on all or a material part of its business or operations, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation; or
  - (v) if the validity of the Swap Agreement is contested by the Counterparty or if the Counterparty shall deny any of its obligations under the Swap Agreement or it shall be or become unlawful for the Counterparty to perform or comply with all or any of its obligations set out in the Swap Agreement or any such obligations shall be or become unenforceable or invalid, in each case as a result of any applicable law or regulation or any ruling of any competent court whose decision is final and unappealable.
- (b) If one or more of the following events (each an **'Issuer Event of Default'**) will have occurred and is continuing,
- (i) subject to Condition 3(b) the Issuer fails to pay any amount of interest or any other amount or to deliver any amount of Exchange Property on any of the Bonds when due and such failure continues unremedied for a period of 30 days; or
  - (ii) the Issuer does not perform or comply with any one or more of its other obligations under the Bonds which default is incapable of remedy or is not remedied within 60 days after notice of such default shall have been given to the Issuer by any Bondholder; or
  - (iii) a distress, attachment, execution or other legal process is levied, enforced or sued out on or against any part of the property, assets or revenues of the Issuer and is not discharged or stayed within 90 days; or
  - (iv) the Issuer is (or is, or could be, deemed by law or a court to be) insolvent or bankrupt or unable to pay its debts, stops, suspends or threatens to stop or suspend payment of all or a material part of (or of a particular type of) its debts, proposes or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors in respect of any of such debts or a moratorium is agreed or declared in respect of or affecting all or any part of (or of a particular type of) the debts of the Issuer; or

- (v) an order is made or an effective resolution passed for the winding-up or dissolution of the Issuer, or the Issuer ceases or threatens to cease to carry on all or a material part of its business or operations;

then, upon the agreement of a majority of the Holders, the Holders may remove the Issuer as fiduciary provided that no such removal shall take effect until a Substitute has simultaneously with such removal been appointed by a majority of the Holders, such Substitute has been approved by the Counterparty, such Substitute has accepted such appointment, the Fiduciary Assets have been transferred to the Substitute and the Substitute has assumed the rights and obligations of the Issuer under the Bonds.

- (c) If one or more of the following events (each a "**Company Event of Default**") will have occurred and is continuing, any Holder may give written notice to the Issuer at its registered office that any Bond held by such Holder is exchangeable, whereupon such Bond will be exchanged in accordance with Condition 5(b), unless such Company Event of Default will have been cured by the Company or waived by the relevant Holder(s) prior to receipt of such notice by the Issuer:
  - (i) the Company is insolvent or bankrupt or unable to pay its debts, stops, suspends or threatens to stop or suspend payment of all or a material part of (or of a particular type of) its debts or becomes subject to an order for "*Liquidazione Coatta Amministrativa*" pursuant to Article 80 et seq of the Consolidated Banking Law or "*Amministrazione Straordinaria*" pursuant to Article 70 et seq of the Consolidated Banking Law (within the meaning ascribed to those expressions by the laws of the Republic of Italy); or
  - (ii) an administrator is appointed, an order is made or an effective resolution passed for the winding-up or dissolution or administration of the Company, or the Company ceases or threatens to cease to carry on all or a material part of its business or operations, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation.

## 15 Enforcement

- (a) Consistent with the Luxembourg law of 27 July 2003 on trust and fiduciary contract (the "**Fiduciary Law**"), no Holder has a direct right of action against the Counterparty to comply with its obligations under the Swap Agreement, even in the case of the Issuer's failure to act or the insolvency of the Issuer. However, if, under the Swap Agreement the Issuer is entitled and, in addition, has, in accordance with the Fiduciary Contract, become obliged to take legal action against the Counterparty and has failed to take such action within a reasonable time, then (if and to the extent such failure is continuing) the Holders shall be entitled to take indirect legal action (*action oblique*) under the Luxembourg Civil Code against the Counterparty in the Issuer's stead and on its behalf.
- (b) Upon the breach by the Counterparty of any of its obligations under the Swap Agreement the Issuer may at any time, at its discretion and without notice, take such proceedings against the Counterparty as it may think fit to assert the Issuer's rights under the Swap Agreement, but it shall not be bound to take any proceedings or any other action in relation to the Swap Agreement, unless (i) it shall have been so requested in writing by the Holders of at least 30 per cent. of the aggregate principal amount of the Bonds then outstanding and (ii) it shall have been indemnified (including, but not limited to payment of its expenses) by the Holders to its satisfaction.



- (c) Without prejudice to its rights of indemnification under applicable law, in the event of any enforcement by the Issuer of its rights against the Counterparty, the Issuer will be entitled to be paid its costs and expenses of such enforcement out of the proceeds of such enforcement, in priority to any claims of the Holders.
- (d) The Conditions constitute the “**Fiduciary Contract**”. They set out the rights of the Holders under the Fiduciary Contract and certain duties, powers and discretions of the Issuer which correspond in substance to those contained in the Swap Agreement. As a fiduciary, the Issuer does not and cannot represent the Holders. However, the Issuer shall, and hereby undertakes to exercise its rights under the Swap Agreement and its corresponding duties, powers and discretion in the best interests of the Holders and to do so in such a manner as to give effect to the Conditions.

## 16 Holders Representation – Meetings

The Holders together form a body, created *inter alia* for the purposes of representation of the common interests of the Holders in accordance with the provisions of the Luxembourg law of 10 August 1915 relating to commercial companies, as amended.

A general meeting of the Holders may appoint one or several representatives of the body of Holders and determine their powers. When the representative(s) have been appointed, the Holders will no longer be able to exercise individually the rights attaching to their Bonds against the Issuer.

A meeting of the Holders may be convened at any time by the representative(s) or by the management of the Issuer. The representatives, provided they have received an advance on their expenses, or the management must convene a meeting of the body of Holders if Holders representing 5 per cent. or more of the total amount of outstanding Bonds so request. The meetings of the Holders will be held at the venue specified in the convening notice.

Every Holder will have the right to attend and vote at meetings of the Holders in person or by proxy, except that if the Issuer holds Bonds itself, the Issuer is not entitled to exercise the voting rights attached to these Bonds. The voting rights attaching to the Bonds are proportional to the portion of the issue they represent, each Bond in the Specified Denomination carrying one vote.

A meeting of the Holders may be convened (i) in the event of a merger involving the Issuer, (ii) in order to approve certain changes to the Holders' rights and (iii) generally, in order to determine any measure aimed at defending the Holders' interests or to ensure the exercise by the Holders of their rights.

A meeting of the Holders may validly decide, without any quorum requirements and by a simple majority of the votes cast by the Holders present or represented at the meeting, upon the appointment and removal of representatives, the removal of special representatives nominated by the Issuer and the approval of any conservatory measure taken in the general interests of the Holders.

In respect of any other decision the meeting of the Holders may validly decide upon first convening only if the Holders present or represented hold at least 50 per cent. of the aggregate principal amount of the Bonds outstanding at that time. No quorum is required at a reconvened meeting. The decisions at such meetings will be passed by a majority consisting of not less than 75 per cent. of the votes cast by Holders present or represented.

Each Holder shall have the right, during the 15 days prior to the general meeting of the Holders as a body, to consult or take copies, or cause an agent to do so on his behalf, of the text of the proposed resolutions and the reports to be presented to the meeting, at the registered office of the Issuer and, as the case may be, at any other place specified in the convening notice.

The Issuer undertakes to make the premises of its registered office available to the Holders for their meetings. The holder of the Global Bond will be treated as being two persons for the purposes of any quorum requirements of, or the right to demand a poll at, a meeting of Holders and, at any such meeting, as having one vote in respect of each Bond in the Specified Denomination represented by the Global Bond.

## **17 Agents**

- (a) The Bank of New York will be the initial paying and exchange agent (the **"Paying and Exchange Agent"**). The address of the specified offices of the Paying and Exchange Agent is:

One Canada Square  
London E14 5AL

In no event will the specified office of a Paying and Exchange Agent or any other paying agent appointed by the Issuer be within the United States.

- (b) J.P. Morgan Securities Ltd. will be the calculation agent (the **"Calculation Agent"** and together with the Paying and Exchange Agent, the **"Agents"**).
- (c) The Issuer will procure that there will at all times be a Paying and Exchange Agent and a Calculation Agent. The Issuer is entitled to appoint banks of international standing as Paying and Exchange Agent. Furthermore, the Issuer is entitled to terminate the appointment of any Paying and Exchange Agent. In the event of such termination or such bank being unable or unwilling to continue to act as Paying and Exchange Agent, the Issuer will appoint another bank of international standing as Paying and Exchange Agent. Such appointment or termination will be published without undue delay in accordance with Condition 18, or, should this not be possible, be published in another appropriate manner.
- (d) All calculations and determinations pursuant to these Conditions by an Agent (including in determining whether an Adjustment Event has occurred and any adjustments to the composition of the Exchange Property, as to the Exchange Property per Bond and related matters) will (save in the case of manifest error) be final and binding on the Issuer, the Holders and the other Agents. An Agent may, after prior consultation with the Issuer, engage the advice or services of any lawyers or other experts whose advice or services it deems necessary and may rely, after consultation with the Issuer, upon any advice so obtained. Such Agent will incur no liability as against the Holders in respect of any action taken, or not taken, or suffered to be taken, or not to be taken, in accordance with such advice in good faith.
- (e) Each Agent acting in such capacity, acts only as agent of the Issuer. There is no agency or fiduciary relationship between any Agent and the Holders.

## **18 Notices**

- (a) All notices concerning the Bonds shall, where possible, be communicated by registered mail directly to the Holders registered in the Bondholders' Register kept at the registered

office of the Issuer. Any such notice will be deemed to have been given on the third day after the day on which the said notice was despatched by the Issuer.

- (b) In addition, all notices concerning the Bonds may, where possible, be communicated directly by fax or electronic communication to the Holders. Any such notice will be deemed to have been given when despatched by the Issuer.
- (c) The Issuer may also deliver all notices concerning the Bonds to the Clearing System, for communication by the Clearing System to the accountholders in the Clearing System. Any such notice will be deemed to have been given to the accountholders in the Clearing System on the day on which the said notice was given to the Clearing System.
- (d) In the case of a notice effected by more than one of the communication methods provided in Condition 18(a) to (c) above, the notice shall be deemed to be effected on the day on which the first such communication is, or is deemed to be, effective.

## **19 Limitation Period**

Claims against the Issuer in respect of the Bonds shall be prescribed and become void unless made within ten years (in the case of all payments other than payments of interest and any delivery of Exchange Property) and five years (in the case of interest) from the relevant date on which they fall due.

## **20 Governing Law and Submission to Jurisdiction**

The Bonds, the Swap Agreement, the Company Swap Agreement and the Fiduciary Contract constituted by the Bonds shall be governed by and interpreted in accordance with the laws of Luxembourg and the Fiduciary Contract shall be governed in particular by the Fiduciary Law. Actions or proceedings against the Issuer may be brought only in a court of Luxembourg - City.

The Usufruct Agreement shall be governed by and interpreted in accordance with the laws of the Republic of Italy. Any and all the differences, controversies and disputes of any nature whatsoever arising out of or relating to the Usufruct Agreement including, without limitation, any dispute relating to its validity, interpretation, performance or termination, shall be subject to the exclusive jurisdiction of the Courts of Milan.