

(xxii) pay or authorize the payment of distributions to the Members;

(xxiii) prosecute, defend, settle or compromise actions or claims at law or in equity at the expense of the Fund as may be necessary or proper to enforce or protect the interests of the Fund, and satisfy any judgment, decree or decision of any court, board or authority having jurisdiction or any settlement of any suit or claim prior to judgment or final decision thereon, first, out of any insurance proceeds available therefor, and then, out of the Fund's; and

(xxiv) make, execute, sign, acknowledge, swear to, record and file (i) this Agreement and any amendment to this Agreement, (ii) the Registration Statement and all amendments thereto required or permitted by law or the provisions of this Agreement, (iii) all certificates and other instruments deemed advisable by the Manager to carry out the provisions of this Agreement and applicable law or to permit the Fund to become or to continue as a limited liability company wherein the Members have limited liability in a jurisdiction where the Fund may be doing business, (iv) all instruments that the Manager deems appropriate to reflect a change or modification of this Agreement or the Fund in accordance with this Agreement, including, without limitation, the substitution of Transferees as Substituted Members pursuant to Section 10.3 and amendments to this Agreement, (v) all conveyances and other instruments or papers deemed advisable by the Manager to effect the winding up and dissolution of the Fund, (vi) all fictitious or assumed name certificates required or permitted to be filed on behalf of the Fund, and (vii) all other instruments or papers that may be required or permitted by law to be filed on behalf of the Fund.

The fact that the Manager or one or more of the Members has a direct or indirect interest in or is connected, directly or indirectly, with any Person with which the Fund may have dealings, including, but not limited to, any Person that renders investment advisory, brokerage, custodial, share transfer or related services, shall not preclude such dealings or make them void or voidable, and neither the Fund nor any of the Members shall have any rights in or to such dealings or any profits derived therefrom.

7.4 Other Businesses. Subject to Section 7.5, the Manager and any Member, or any stockholder, officer, director, member, manager, partner, Affiliate or agent of the Manager or any Member, may engage in or possess any interest in other business ventures of any kind, nature or description, independently or with others, including but not limited to investments in, and financing, acquiring and disposing of, financial instruments, providing investment advisory or asset management services, investments and management counseling, brokerage services, or serving as officers, directors, advisors or agents of other companies, whether such ventures are competitive with the Fund or otherwise, and neither the Fund nor the Members shall have any rights or obligations by virtue of this Agreement or the relationship created hereby in or to such independent ventures or the income or profits or losses derived therefrom. The Manager and its Affiliates may also give advice or take action with respect to its own account or any other third party that may differ from or be opposite from advice given or the timing or nature of action taken with respect the Fund.

7.5 Exclusivity. Notwithstanding anything to the contrary contained herein, until such time when the Manager determines to dissolve the Fund, any investment opportunity to acquire the Bonds that is presented to or originated by the Manager and its Affiliates shall be offered solely to the Fund, except for any Bonds currently held by the ESM Fund and any follow-on investment related to such holdings (i.e., any additional investment by the ESM Fund in the same class and series of the Bonds currently held by the ESM Fund).