

CERTAIN ERISA CONSIDERATIONS

ERISA imposes certain requirements on “employee benefit plans” (as defined in Section 3(3) of ERISA) subject to Title I of ERISA, including entities such as collective investment funds and separate accounts whose underlying assets include the assets of such plans (collectively, “ERISA Plans”) and on those persons who are fiduciaries with respect to ERISA Plans. Investments by ERISA Plans are subject to ERISA’s general fiduciary requirements, including the requirement of investment prudence and diversification and the requirement that an ERISA Plan’s investments be made in accordance with the documents governing the ERISA Plan. The prudence of a particular investment must be determined by the responsible fiduciary of an ERISA Plan by taking into account the ERISA Plan’s particular circumstances and all of the facts and circumstances of the investment including, but not limited to, the matters discussed above under “Risk Factors” and the fact that in the future there may be no market in which such fiduciary will be able to sell or otherwise dispose of any Securities it may purchase.

Section 406 of ERISA and Section 4975 of the Code prohibit certain transactions involving the assets of an ERISA Plan (as well as those plans that are not subject to ERISA but to which Section 4975 of the Code applies, such as individual retirement accounts, including entities whose underlying assets include the assets of such plans (together with ERISA Plans, “Plans”)) and certain persons (referred to as “parties in interest” or “disqualified persons”) having certain relationships to such Plans, unless a statutory or administrative exemption is applicable to the transaction. A party in interest or disqualified person who engages in a prohibited transaction may be subject to excise taxes and other penalties and liabilities under ERISA and the Code. In addition, the fiduciary of the Plan that engaged in such a non-exempt prohibited transaction may be subject to penalties and liabilities under ERISA and/or the Code.

The U.S. Department of Labor has promulgated a regulation, 29 CFR Section 2510.3-101 (as modified by Section 3(42) of ERISA, the “Plan Asset Regulation”), describing what constitutes the assets of a Plan with respect to the Plan’s investment in an entity for purposes of certain provisions of ERISA, including the fiduciary responsibility provisions of Title I of ERISA, and Section 4975 of the Code. Under the Plan Asset Regulation, if a Plan invests in an “equity interest” of an entity that is neither a “publicly-offered security” nor a security issued by an investment company registered under the Investment Company Act, the Plan’s assets include both the equity interest and an undivided interest in each of the entity’s underlying assets, unless it is established that the entity is an “operating company” or that equity participation in the entity by Benefit Plan Investors is not “significant.” The term “Benefit Plan Investor” is defined in the Plan Asset Regulation as (a) any employee benefit plan (as defined in Section 3(3) of ERISA) subject to Title I of ERISA, (b) any plan described in Section 4975(e)(1) of the Code to which Section 4975 of the Code applies and (c) any entity whose underlying assets include plan assets by reason of a plan’s investment in the entity.

The Plan Asset Regulation defines an “equity interest” as an interest in an entity other than an interest that is treated as indebtedness under applicable local law and which has no substantial equity features. The Class A Notes, Class B Notes and Class C Notes should not be considered to be “equity interests” in the Issuer, although no assurance can be given in this regard. However, the Class D Notes and the Income Notes may constitute “equity interests” in the Issuer for purposes of the Plan Asset Regulation, and such Class D Notes and Income Notes will not constitute “publicly-offered securities” for purposes of the Plan Asset Regulation. In addition, the Issuer will not be registered under the Investment Company Act and it is not likely that the Issuer will qualify as an “operating company” for purposes of the Plan Asset Regulation. Therefore, if equity participation in the Issuer by Benefit Plan Investors is “significant” within the meaning of the Plan Asset Regulation, the assets of the Issuer could be considered to be the assets of any Plans that purchase or hold the Class D Notes or the Income Notes. In such circumstances, in addition to considering the applicability of ERISA and the Code to the Class D Notes or Income Notes, a Plan fiduciary considering an investment in the Class D Notes or the Income Notes would have to consider the applicability of Title I of ERISA and Section 4975 of the Code to transactions involving the Issuer, Investment Manager, Trustee, Collateral Administrator, Placement Agent or Initial Purchaser and their respective Affiliates, including whether such transactions might constitute a prohibited transaction under ERISA or Section 4975 of the Code or otherwise may result in a breach of fiduciary duty under ERISA.

Under the Plan Asset Regulation, equity participation in an entity (including the Issuer) by Benefit Plan Investors is “significant” on any date if, immediately after the most recent acquisition of any equity interest in the entity, 25% or more of the value of any class of equity interests in the entity is held by Benefit Plan Investors. For