

exchange for its Securities, in good faith and without knowledge that the payments were avoidable. Nevertheless, since there is no judicial precedent relating to a structured transaction such as the Securities, there can be no assurance that a holder of Securities will be able to avoid recapture on this or any other basis.

Lender Liability Considerations and Equitable Subordination. A number of judicial decisions in the United States and some non-U.S. jurisdictions have upheld the right of borrowers to sue lending institutions and others on the basis of various evolving legal theories. Generally, lender liability is founded upon the premise that a lender has violated a duty (whether implied or contractual) of good faith and fair dealing owed to the borrower or has assumed a degree of control over the borrower that creates a fiduciary duty owed to the borrower or its other creditors or shareholders.

In some cases, courts have subordinated the claim of a lender against a borrower to claims of other creditors of the borrower when the lending institution is found to have engaged in unfair, inequitable or fraudulent conduct. Because of the nature of certain of the Collateral Obligations, the Issuer could be subject to claims from creditors of a Collateral Obligation obligor that the Issuer's claim under the Collateral Obligation should be equitably subordinated.

Insolvency Considerations With Respect to Collateral Obligations of Non-U.S. Issuers. Collateral Obligations consisting of obligations of non-U.S. obligors may be subject to various laws enacted in their home countries for the protection of debtors or creditors, which could adversely affect the Issuer's ability to recover amounts owed. These insolvency considerations will differ depending on the country in which each obligor is located and may differ depending on whether the obligor is a non-sovereign or a sovereign entity. These Collateral Obligations may also be subject to greater risks than Collateral Obligations of U.S. obligors, such as: (i) less publicly available information; (ii) varying levels of governmental regulation and supervision; and (iii) the difficulty of enforcing legal rights in a non-U.S. jurisdiction and uncertainties as to the status, interpretation and application of laws. A number of European jurisdictions operate "debtor-friendly" insolvency regimes that would result in delays in payments from obligors subject to such regimes. The different insolvency regimes applicable in European jurisdictions result in a corresponding variability of recovery rates for Collateral Obligations with obligors in such jurisdictions. No reliable historical data is available.

Not Registered. Neither the Securities nor the Offering will be registered under the Securities Act. Such registration provides investors with certain protections, including disclosure requirements that will not be applicable to the investors in the Securities.

Investment Company Act of 1940. None of the Issuer, the Co-Issuer or the pool of Collateral has registered with the SEC as an investment company pursuant to the Investment Company Act, in reliance on an exemption from registration and no-action positions available for non-U.S. obligors (a) whose outstanding securities owned by U.S. persons are owned exclusively by Qualified Purchasers and (b) which do not make a public offering of their securities in the United States. Accordingly, investors in the Securities will not be accorded the protections of the Investment Company Act. Counsel for the Co-Issuers will opine, in connection with the sale of the Securities, that neither the Issuer nor the Co-Issuer is at such time an investment company required to be registered under the Investment Company Act (assuming, for the purposes of such opinion, the accuracy and completeness of all representations and warranties made or deemed to be made by investors in the Securities). No opinion or no-action position has been requested of the SEC.

If the SEC or a court of competent jurisdiction were to find that the Issuer or the Co-Issuer is required, but had failed, to register in violation of the Investment Company Act, possible consequences include, but are not limited to, the following: (i) the SEC could apply to a district court to enjoin the violation; (ii) investors could sue the Issuer or the Co-Issuer and recover any damages caused by the violation of the registration requirement of the Investment Company Act; and (iii) any contract to which the Issuer or the Co-Issuer is party that is made in, or whose performance involves a, violation of the Investment Company Act would be unenforceable by any party to the contract unless a court were to find that under the circumstances enforcement would produce a more equitable result than nonenforcement and would not be inconsistent with the purposes of the Investment Company Act. Should the Issuer or the Co-Issuer be subjected to any or all of the foregoing, there would be a material adverse effect on the Issuer or Co-Issuer.