

turn adversely affect the Issuer and the investors in the Preferred Shares and (iii) none of the Transaction Parties or their respective affiliates, corporate officers or professional advisors or any other Person makes any representation, warranty or guarantee that the Portfolio Advisor or its affiliates or the transaction contemplated by this Offering Memorandum will be in compliance with the U.S. Risk Retention Regulations.

Each prospective investor should consult its own legal, accounting and other advisors to determine whether and to what extent this information is sufficient for its purposes and any other requirements of which it is uncertain. For important information about the U.S. Risk Retention Regulations, see information under Section 12, "Certain Risk Factors—Risks Relating to the Preferred Shares—U.S. Risk Retention Regulations."

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, on 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 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 Preferred Shares 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 and Keogh plans, including entities whose underlying assets include the assets of such plans (collectively, 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 (each, a "prohibited 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 is engaged in such a non-exempt prohibited transaction may be subject to penalties under ERISA and the Code.

The Co-Issuers, the Security Party and the Portfolio Advisor and any of their respective affiliates (each, a "**Transaction Party**") may be parties in interest and disqualified persons with respect to many Plans. Prohibited transactions within the meaning of Section 406 of ERISA or Section 4975 of the Code may arise if Preferred Shares are acquired or held by a Plan with respect to which any Transaction Party is a party in interest or a disqualified person. Certain exemptions from the prohibited transaction provisions of Section 406 of ERISA and Section 4975 of the Code may be applicable, however, in certain cases, depending in part on the type of Plan fiduciary making the decision to acquire any Preferred Shares and the circumstances under which such decision is made. Included among these exemptions are Section 408(b)(17) of ERISA and Section 4975(d)(20) of the Code (relating to transactions with certain service providers) and Prohibited Transaction Class Exemption ("**PTCE**") 91-38 (relating to investments by bank collective investment funds), PTCE 84-14 (relating to transactions effected by independent "qualified professional asset managers"), PTCE 95-60 (relating to transactions involving insurance company general accounts), PTCE 90-1 (relating to investments by insurance company pooled separate accounts) and PTCE 96-23 (relating to transactions determined by certain "in-house asset managers"). There can be no assurance that any of these exemptions or any other exemption will be available with respect to any particular transaction involving Preferred Shares.

Governmental plans (as defined in Section 3(32) of ERISA), non-U.S. plans (as defined in Section 4(b)(4) of ERISA) and