



Association of British Insurers



## AVOIDING THE PITFALLS: IMPROVING ACCESS TO NON-BANK LENDING THE CONTRIBUTION OF STANDARDISED DOCUMENTATION

Investors have yesterday (21 June) launched a set of model covenants to improve transparency and clarity in the investment grade bond markets. It is hoped that clearer language and more standardised documentation will increase the attractiveness of the markets to investors, helping improve access to non-bank lending for firms.

The new model covenants will be for investment grade issues in the Sterling and Euro-denominated bond markets. The initiative comes from The Bond Covenant Group (TBCG), comprised of the Association of British Insurers (ABI), the BVI Bundesverband Investment und Asset Management e.V., the Investment Management Association (IMA) and the National Association of Pension Funds (NAPF).

The model covenants are not offered as a mandatory set of investor requirements but as building blocks which can, where necessary, be tailored to individual issuer circumstances. They are not retrospective. TBCG intend that they should be a living document and that their usefulness over time will lead to a general adoption in investment grade markets.

Rod Paris, Chairman of the ABI's Bond Committee said:

"More readily comprehensible and easily-assimilated documentation will increase investor appetite for investment grade debt issues. Firms will have access to a wider pool of investors which will be of particular value to new and infrequent issuers, particularly at a time when access to bank lending will be more restricted."

Rudolf Siebel, Managing Director at BVI adds:

"The TBCG initiative is another important step in our long standing quest for improvement in the transparency and operational standards applicable in the investment grade corporate bonds which our members started back in 2004. We are confident that the new model covenants will add their mark to the markets in due course."

ENDS

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## MODEL COVENANTS IN STERLING AND EURO BOND ISSUES

### THE BOND COVENANT GROUP

## **THE BOND COVENANT GROUP (TBCG)**

The TBCG is comprised of:

- the Association of British Insurers (ABI)
- BVI Bundesverband Investment und Asset Management e.v. (BVI)
- the Investment Management Association (IMA), and
- the National Association of Pension Funds (NAPF)

### **ITS PURPOSE**

This ad hoc group has come together to promote an adaptable set of model covenants in Sterling and Euro investment grade bond issues.

### **WHY THIS INITIATIVE?**

The TBCG has a number of objectives in mind including:

- aiding liquidity
- promoting investment grade markets and access to them
- promoting efficiency in the primary markets
- providing clarity and greater certainty of investor protection.

### **THE ADVANTAGES**

The clarity, transparency and standardisation arising from the adoption of the model covenants ARE anticipated to benefit:

- the markets by giving all participants more readily – comprehensible and easily assimilated documentation indirectly aiding overall issuance and liquidity
- issuers by improving the efficiency of the new issuance process and widening access to the investment grade markets and of particular value to new or infrequent issuers
- investors will equally benefit from a more efficient new issuance process and a more user-friendly secondary market as standardisation takes hold. Combined with greater clarity on the protection afforded by the covenants offered, this will increase the overall attractiveness of the asset class.

### **WHY NOW?**

The impetus for the initiative has many sources. These include the impact of the financial crisis, when markets almost froze, and the longstanding concern of investors that the protection afforded by covenants is effective. The latter in the last decade has been reflected in:

- the 2003 paper of the Group of 26 followed by
- an ABI paper on best practice in primary markets and
- discussions within the Association des Marchés de Taux en Euro and latterly
- the ABI/BVI co sponsored Bondholder Dialogue

### **THE LONG TERM**

TBCG see the model covenants as a living document. Monitoring and periodic review will be required. Feedback from all market participants is welcomed; the contact point for comment is as follows:

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# MODEL COVENANTS IN STERLING AND EURO BOND ISSUES

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## 1. INTRODUCTION

In this paper, we propose language for model negative pledge, change of control, disposals, information and committee expenses provisions (the “**Relevant Provisions**”) to be included in investment grade Sterling and Euro bonds.

Set out below, in relation to each of the Relevant Provisions, is a summary of the shortcomings we have identified in the current treatment of those provisions, and our proposals for improvements. In Section 2, we propose detailed drafting for the Relevant Provisions. For clarity, the format of the drafting is closer to that seen in the Loan Market Association forms for bank lending documents.

We have reviewed the paper entitled “**Improving Covenant Protections in the Investment Grade Bond Market**” dated December 17, 2007, published by The Credit Roundtable, where a similar exercise was carried out in relation to covenants in the NY law bond market (the “**US Model Covenants**”). We have, where relevant, compared the US Model Covenants to our proposals.

### 1.1 Negative Pledge

The principal shortcomings that we have seen in negative pledges, with varying degrees of regularity, are:

- (a) the negative pledge only applying to capital markets issues, and not other debt;
- (b) no restriction on debt at a subsidiary level, which debt, while not secured, would be structurally senior to the bonds;
- (c) the negative pledge applying only to some Group Companies, such as “Material” or “Restricted” Subsidiaries;
- (d) the negative pledge applying only to certain assets;
- (e) the Issuer being able to grant security to another creditor if it is given for the Bonds “equally and ratably”;
- (f) “standard” carve-outs being drafted in such a way that the protection of the negative pledge is watered down to a greater extent than perhaps anticipated.

To address these shortcomings, we have drafted the negative pledge:

- (i) to apply to all financial indebtedness;
- (ii) to include restrictions on debt that, while not secured, is structurally senior because it is borrowed or guaranteed by subsidiaries of the Issuer (and we have thus recast the provision as a “**Restrictions on Priority Borrowings**”);
- (iii) to apply to all Group Companies;
- (iv) to apply to all types of assets of whatever value;
- (v) not to include security being granted on an “equal and ratable” basis;
- (vi) to include sale and leasebacks within its scope.

We have included any marked to market liabilities under any derivative contracts in the definition of “Borrowings”. While it would be very unusual to see those liabilities included in “Debt” for the purposes of any gearing test, it seems reasonable to limit the ability of the Issuer to give security for those liabilities, or to incur them on a structurally senior basis.

We have included a list of possible standard carve-outs. While recognising that these will need to be tailored to the particular Issuer, we think it would be useful to standardise the language to ensure, so far as possible, that the intended protection is actually achieved. The list includes, subject to limitations where appropriate:

- (i) a basket by reference to a fixed amount or a percentage of tangible net worth or net tangible assets;
- (ii) debt of after-acquired companies;
- (iii) debt to finance acquisitions, construction or improvements secured only on the assets acquired;
- (iv) existing debt;
- (v) refinancing debt;
- (vi) intercompany debt.

The US Model Covenants broadly address the same principal shortcomings as those we have identified, but we have proposed a somewhat more detailed approach to the standard carve-outs.

## **1.2 Change of Control**

The three principal shortcomings in existing issues are:

- (a) there is often no Change of Control provision;
- (b) where there is, the provision does not always include a sale of all or substantially all the assets as a trigger (nor do the covenants contain a restriction on disposals);
- (c) where there is, and the Change of Control has to be linked to a ratings downgrade, the way in which the provisions are drafted is often unworkable in practice due to: timing requirements; requirements that rating agencies do or say something that they will not, in practice, do or say; failure adequately to address the problems with unrated securities; or a combination of the above.

We therefore propose that a Put Event, entitling the Holders to require the Bonds to be redeemed, be defined as:

- (a) a disposal of all or substantially all of the assets of the Group;
- (b) any person or group of persons acting in concert acquiring over 50% of the voting shares in the Issuer;
- (c) any person or group of persons acting in concert acquiring control of the board of the Issuer, or otherwise acquiring control of its operations.

In order to cater for issues where it is agreed that there should be a requirement for a ratings downgrade for a Put Event to be triggered, we have proposed language that could be included to allow for the concept, but which avoids the potential problems inherent in showing causation.

We have also proposed a covenant restricting disposals. This would apply at a lower level than “all or substantially all of the assets”, and the interface between the disposals covenant and the Put Event would need to be considered. If a disposals covenant is included, a disposal of all or substantially all of the assets would be both an Event of Default and Put Event.

## **1.3 Information**

The following may be considered useful (in each case to be posted on the issuer's website):

- (i) annual accounts;
- (ii) interim accounts;
- (iii) certificate of compliance with all covenants, signed by a director, with annual and interim accounts and on request by the Trustee or 25% of Holders;
- (iv) certificate of compliance with financial covenants (if any), from the auditors, with annual accounts;
- (v) notification of a potential Event of Default under the Bonds or any other debt documents;
- (vi) notification of any material information;
- (vii) copies of all bond documents and all other material debt documents, including facility agreements, intercreditor agreements and security documents, and amendments thereto;
- (viii) following a potential Event of Default, or if the Trustee or the Required Holders has cause to believe that a potential event of default may have occurred, any information that the Trustee (or any Holder through the Trustee) reasonably requests.

The list is intended to set out the minimum requirement for all bond issues. There may be other specific requirements, such as regular valuations of real property provided as collateral, which would need to be addressed.

Subject to certain exemptions, companies whose shares or debt securities are admitted to trading, and whose Home State is the UK, are obliged to comply with the requirements of DTR 4 of the FSA DTR Rules (which implements Chapter II of the Transparency Directive (2004/109/EC)) in relation to the publication of accounts, and a company whose financial instruments are admitted to trading on a regulated market in the UK are obliged to comply with DTR 2 (which implements Article 6 of the Market Abuse Directive (2003/6/EC)) in relation to inside information.

Some Issuers will be obliged to comply with DTR 4 and DTR 2, or the equivalent legislation implementing the relevant Directives. In an attempt to impose some consistency on the information to be provided, we have proposed that those Issuers who are not providing accounts in compliance with DTR 4 or its equivalent and publishing inside information in compliance with DTR 2 or its equivalent should comply with similar regimes.

DTR 4 requires audited annual accounts within 120 days and semi-annual accounts within 60 days. We propose that all Issuers should comply with those requirements and that timetable. It also requires a detailed management report and responsibility statements with each set of annual and interim accounts. We propose a short-form management report with the annual accounts, but no responsibility statements.

DTR 2 requires the disclosure of certain information that would be likely to have a significant effect on the price of “qualifying investments”. We have essentially replicated the requirement (for those Issuers that are not required to comply with DTR 2 or its equivalent) by reference to information that would be likely to have a significant effect on the price of the Bonds.

#### **1.4 Bondholder Committees**

Following an Event of Default, potential Event of Default, or even an event or circumstance that may give rise to an Event of Default or potential Event of Default, it would be useful for Holders to have access to legal and financial advice at the cost of the Issuer. While the Trustee has the ability to seek such advice at the Issuer’s cost, this is not always sufficient to protect the interests of the Holders (who may be looking for advice as to their rights against the Trustee) and it is unusual for issuers voluntarily to agree to meet the costs of a Holder committee.



While there are a number of possibilities as to what costs should be paid, to whom, and in what circumstances, we have proposed reimbursement of reasonable fees of legal and financial advisers, incurred by one Holder committee, following an Event of Default or event that would, with the giving of a notice or certificate, or the making of a determination (as to materiality) be an Event of Default.

## 2. MODEL COVENANTS

### 2.1 Common Definitions

“**Default**” means an Event of Default or a [Potential Event of Default/any event specified in Condition [ ] (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination or certification under the Trust Deed or these Conditions or any combination of any of the foregoing) be an Event of Default].

“**Disposal**” means any sale, lease, licence, transfer or other disposal, and “**Dispose**” shall be construed accordingly.

“**GAAP**” means generally accepted accounting principles in [ ]/[including IFRS].

“**Group**” means the Company and each of its Subsidiaries for the time being and “**Group Company**” means any of them.

[“**IFRS**” means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.]

“**Required Holders**” means Holders of Bonds the aggregate principal amount of which is not less than 25% of the aggregate principal amount of the Bonds.

“**Subsidiary**” means [a subsidiary within the meaning of section 1159 of the Companies Act 2006]/[a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006]/[ ].

## 2.2 Restrictions on Priority Borrowings

### [ ] Restrictions on Priority Borrowings

So long as any of the Bonds remain outstanding, the Issuer shall not, and shall ensure that no other Group Company will, incur or allow to remain outstanding any Priority Borrowings other than Permitted Priority Borrowings.

#### Definitions

“**Borrowings**” means, at any time, the aggregate outstanding principal, capital or nominal amount (and any fixed or minimum premium payable on prepayment or redemption) of Group Companies in respect of:

- (a) moneys borrowed and debit balances at banks or other financial institutions;
- (b) any acceptance under any acceptance credit or bill discounting facility (or dematerialised equivalent);
- (c) any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease (a “**Finance Lease**”);
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any derivative transaction (and, when calculating the value of that derivative transaction, only the marked to market value shall be taken into account);
- (g) any counter-indemnity obligation in respect of a guarantee, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability of an entity which is not a Group Company which liability would fall within one of the other paragraphs of this definition;
- (h) any amount raised by the issue of redeemable shares which are redeemable (other than at the option of the Issuer) before the [*insert final maturity date*] or are otherwise classified as borrowings under GAAP;
- (i) any amount raised under any other transaction (including any forward sale or purchase, sale and sale back or sale and leaseback agreement) having the commercial effect of a borrowing or otherwise classified as borrowings under GAAP; and
- (j) (without double-counting) the amount of any liability in respect of any guarantee for any of the items referred to in paragraphs (a) to (i) above.

“**Permitted Priority Borrowings**” means:

- (a) Permitted Secured Borrowings;
- (b) Permitted Subsidiary Borrowings; and
- (c) Priority Borrowings not falling within the definitions of Permitted Secured Borrowings or Permitted Subsidiary Borrowings, up to an aggregate amount outstanding of [ ].

“**Permitted Secured Borrowings**” means Secured Borrowings of any Group Company:

- (a) under any netting or set-off arrangement entered into in the ordinary course of banking arrangements for netting debit and credit balances;

- (b) which becomes a Group Company after the [date of the Trust Deed] where the Secured Borrowings were incurred prior to the date on which that Group Company became a Group Company if those Secured Borrowings:
  - (i) were not incurred in contemplation of the acquisition of that Group Company; and
  - (ii) are discharged, or the relevant Security released, within [ ] months of that Group Company becoming a Group Company;
- (c) under any Finance Leases up to an aggregate capital value of [ ] (or its equivalent) at any time;
- (d) owed to any other Group Company;
- (e) [listed in Schedule [ ]/outstanding on the [date of the Trust Deed]];
- (f) incurred to finance the acquisition of a Group Company (other than the Issuer or any holding company of the Issuer) or the acquisition, construction or improvement of any assets, if the Secured Borrowings are secured only on the shares in the Group Company or on the assets acquired, constructed or improved, up to an aggregate amount outstanding at any time of [ ];
- (g) incurred to refinance any Permitted Secured Borrowings falling within paragraphs [(e) or (f)] of this definition, if the Security securing the new Secured Borrowings is no more extensive than the Security securing the refinanced Permitted Secured Borrowings, and the amount of the new Secured Borrowings is no greater than the refinanced Permitted Secured Borrowings.

**“Permitted Subsidiary Borrowings”** means Borrowings of any Subsidiary of the Issuer:

- (a) owed to any other Group Company;
- (b) [listed in Schedule [ ]/outstanding on this [date of the Trust Deed]];
- (c) constituting guarantees of the [Bonds] [or other direct Borrowings of the Issuer ranking pari passu with the Bonds],

and which are not Secured Borrowings.

**“Priority Borrowings”** means:

- (a) Secured Borrowings; and
- (b) Borrowings of any Subsidiary of the Issuer.

**“Secured Borrowings”** means any Borrowings:

- (a) which are secured by any Security over any asset of, or shares in, any Group Company;
- (b) of the type described in paragraphs (d) or (e) of the definition of **“Borrowings”**;
- (c) against or with which any credit balances at banks or financial institutions may be set off or combined, in an amount equal to those credit balances.

## 2.3 Change of control

### [ ]-[ ] Put Events - Option to require redemption or purchase

- (a) If a Put Event occurs, each Holder will have the right to require the Issuer to redeem or, at the Issuer's option, purchase or procure the purchase of, that Holder's Bonds in accordance with this Condition [ ] (the "Put Option").
- (b) Promptly, and in any event within [14] days of a Put Event occurring, the Issuer shall send a Put Event Notice to each Holder, with a copy to the Trustee stating:
  - (i) that a Put Event has occurred and that the Holder is entitled to require the Issuer to redeem or purchase, or procure the purchase of, that Holder's Bonds at the Redemption Price;
  - (ii) the Redemption Price, showing the calculation thereof;
  - (iii) whether the Issuer will redeem, or purchase, or procure the purchase (and, if so, by whom), any Bonds in respect of which the Put Option is exercised;
  - (iv) the Completion Date, being a date not less than [ ] nor more than [ ] days after the date of the Put Event Notice;
  - (v) the procedures, consistent with the Trust Deed and these Conditions, to be followed by the Holder in order to have its Bonds redeemed or purchased.
- (c) If the Issuer does not send a Put Event Notice in accordance with paragraph (b) above, the Trustee may, and shall if so directed by the Required Holders, send the Put Event Notice.
- (d) If a Holder wishes to exercise the Put Option in respect of all or some of its Bonds, it shall do so in accordance with the procedures specified in the Put Event Notice.
- (e) On the Completion Date, the Issuer shall pay, or procure the payment of, the Redemption Price for each Bond in respect of which the Put Option has been exercised to the Paying Agent for the account of each relevant Holder.

### Definitions

"Change of Control" means any person or group of persons acting in concert gains direct or indirect control of the Issuer. For the purposes of this definition:

- (a) "control" of the Issuer means:
  - (i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
    - (A) cast, or control the casting of, more than [50]% of the maximum number of votes that might be cast at a general meeting of the Issuer; or
    - (B) appoint or remove all, or the majority, of the directors or other equivalent officers of the Issuer; or
    - (C) give directions with respect to the operating and financial policies of the Issuer with which the directors or other equivalent officers of the Parent are obliged to comply; and/or
  - (ii) the holding beneficially of more than [50]% of the issued share capital of the Issuer (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

- (b) “**acting in concert**” means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in the Issuer by any of them, either directly or indirectly, to obtain or consolidate control of the Issuer.

“**Completion Date**” means the date on which any exercise of the Put Option will be completed, as specified in the relevant Put Event Notice.

“**Put Event**” means:

- (a) a [Change of Control/Trigger Event]; or
- (b) [the Disposal of all or substantially all of the assets of the Group whether in a single transaction or a series of related transactions, and whether through a Disposal of assets or shares in Group Companies/a breach of Condition [ ](*Restriction on Disposals*)].

“**Put Event Notice**” means a notice sent or to be sent under Condition [ ] (Put Events-Option to require redemption or purchase) by the Issuer or by the Trustee.

“**Put Option**” has the meaning given in Condition [ ] (a) (Put Events-Option to require redemption or purchase).

“**Rated**” means carrying a rating from [at least two] Rating Agencies of [ ] or better.

“**Rating Agencies**” means Moody’s Investors Services Limited, Standard & Poor’s Rating Services, a division of The McGraw Hill Companies Inc, and Fitch Ratings Ltd, or any of their respective successors or any [Substitute Rating Agency].

“**Redemption Price**” means, in relation to a Bond, the principal amount of the Bond multiplied by 101%, together with interest accrued up to but excluding the Completion Date.

“**Reference Stock**” means [ ] or such other UK government stock as the Trustee determines to be a benchmark gilt, the maturity of which most closely matches the maturity of the Bonds.

“**Trigger Event**” means:

- (a) if, at the time a Change of Control occurs, the Bonds are not Rated, a Change of Control;
- (b) if, at the time a Change of Control occurs, the Bonds are Rated, the Bonds ceasing to be Rated on or before the date which is the later of:
- (i) [ ] days after the Change of Control; and
- (ii) if, before the date specified in sub-paragraph (i) above, one or more Rating Agencies announces that it is reviewing the credit rating of the Bonds, the date on which it announces that [the review has been completed].

“**Valuation Date**” means the second [Business Day] before the date of the Put Event Notice.

## 2.4 Restriction on Disposals

### [ ]-[ ] Restrictions on Disposals

- (a) So long as any of the Bonds remain outstanding, the Issuer shall not, and shall procure that no other Group Company will, enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary, to Dispose of any asset, other than a Permitted Disposal, if, on the date of the transaction, the aggregate value of (i) the assets to be Disposed of, when aggregated with the value of all other assets Disposed of [after the date of the Trust Deed/since the later of (A) the date of the Trust Deed and (B) the date falling [3] years prior to the date of the proposed Disposal] by Group Companies, less (ii) Reinvested Proceeds, would exceed [£[ ] (or its equivalent)/[ ]% of [Consolidated Net Worth/Consolidated Asset Value].
- (b) For the purposes of paragraph (a) above:
- (i) the value of any assets which are or are to be Disposed of shall be the value of those assets (without deduction for any liabilities) included in the most recent audited annual financial statements as at the date of their Disposal or, in the case of an asset which was not taken into account in those financial statements, its book value at the date of its Disposal;
  - (ii) if any shares in a Group Company are or are to be Disposed of, there shall be deemed to have been or to be a Disposal of the same proportion of the assets of the relevant Group Company and of any of its Subsidiaries as the proportion of the equity share capital of that Group Company in which the Issuer is (directly or indirectly) interested immediately before the Disposal;
  - (iii) “**Consolidated Asset Value**” means the value of the assets of the Group in the then most recent audited annual financial statements; and
  - (iv) “**Reinvested Proceeds**” means, at any time, the aggregate amount of the proceeds of any Disposal which have, at that time, been applied to the acquisition [, construction or improvement] of assets comparable or superior as to type, value and quality of the assets Disposed of.

“**Permitted Disposal**” means any Disposal which, except in the case of paragraph (b) below, is on arm's length terms:

- (a) of trading stock or cash in the ordinary course of trading of the disposing entity;
- (b) of any asset by a Group Company to the Issuer or to a wholly-owned Subsidiary of the Issuer;
- (c) of assets (other than receivables) in exchange for other assets comparable or superior as to type, value and quality;
- (d) of obsolete or redundant vehicles, plant and equipment for cash;
- (e) of cash equivalent investments for cash or in exchange for other cash equivalent investments;
- (f) of cash in the payment of dividends;
- (g) of cash as consideration for the acquisition of assets.

## 2.5 Information

### [ ]1 Website

The Issuer shall designate and maintain a website (the “**Website**”) and shall supply the Trustee, and any Holder that so requests, with the address of the Website. All information posted on the Website shall be capable of being downloaded and printed by persons with access to the Website.

### [ ]2 Financial Statements

(a) So long as any of the Bonds are outstanding, the Issuer shall, unless it is required to comply, and is complying, with DTR 4 of the DTR Rules of the UK Financial Services Authority as set out in their Handbook (the “**DTR Rules**”), post on the Website:

- (i) as soon as they are available, but in any event within 120 days after the end of each of its financial years, its audited consolidated financial statements for that financial year;
- (ii) as soon as they are available, but in any event within 60 days after the end of the first half of each of its financial years, its consolidated financial statements for that period,

and shall ensure that any such financial statements remain on the Website for at least 5 years.

(b) The Issuer shall procure that each set of financial statements:

- (i) includes a balance sheet, profit and loss account and cashflow statement, shall be certified by a director of the Issuer as giving a true and fair view of (in the case of annual financial statements), or fairly representing (in other cases), its financial condition and operations as at the date as at which those financial statements were drawn up and shall be prepared in accordance with GAAP;
- (ii) is accompanied by a compliance certificate [setting out (in reasonable detail) computation as to compliance with Condition [ ] (*Financial Covenants*), and] confirming that no Default has occurred.

(c) The Issuer shall procure that each set of annual financial statements is accompanied by:

- (i) a management report containing a fair review of the Issuer’s business and a description of the principal risks and uncertainties facing the Issuer, and an indication of any important events that have occurred since the end of the financial year; and
- (ii) a report by the [Auditors] [confirming compliance with Condition [ ] (*Financial Covenants*)].

(d) [If the Trustee or [any Holder/the Required Holders] wishes to discuss the financial position of any Group Company with the Auditors, the Trustee [or the Holder/required Holders] shall notify the Issuer, stating the questions or issues which they wish to discuss with the Auditors. In this event, the Issuer must ensure that the Auditors are authorised (at the expense of the Issuer):

- (i) to discuss the financial position of each Group Company with the Trustee or [Holder/Required Holders] on request from the relevant person; and
- (ii) to post any information which the relevant person may reasonably request.]



## [ ]4 Information

So long as any of the Bonds remain outstanding, the Issuer shall post the following information on the Website:

- (a) a copy of the [*Bond Documents*];
- (b) a copy of [all documents relating to any Borrowings falling within paragraphs (a) to (e) of the definition thereof of any Group Company in excess of £[ ] (or its equivalent), including all loan, credit or facility agreements, trust deeds, indentures, agency agreements, guarantees and security documents and documents containing any intercreditor arrangements, and all amendments to those documents];
- (c) at the same time as they are dispatched, copies of all documents [dispatched by the Issuer to its shareholders generally (or any class of them) or] dispatched by any Group Company to its creditors generally (or any class of them);
- (d) unless it is required to comply, and is complying, with DTR 2 of the DTR Rules, promptly upon becoming aware of it, any information which (i) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur, and is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of [the Bonds]; (ii) is not generally available; and (iii) would, if generally available, be likely to have a significant effect on the price of [the Bonds] subject to any exemptions that would be available to it under DTR 2;
- (e) a notice of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence;
- (f) promptly upon a request by the Trustee or the Required Holders, a certificate signed by two of its directors or senior officers on its behalf certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it);
- (g) promptly on request following a Default or if the Trustee [or the Required Holders] has cause to believe that a Default may have occurred, such further information regarding the financial condition, assets and operations of the Group and/or any Group Company (including any requested amplification or explanation of any item in the financial statements or other material provided by the Issuer as [any Holder/the Required Holders] [through the Trustee] may reasonably request.

## 2.6 Committee Expenses

### (a) Bondholder Committee Expenses

The Issuer will pay, or reimburse each member of any Holder Committee for, all reasonable fees and expenses of legal and financial advisers to the Holder Committee which have been incurred during a Default Period in connection with determining the rights and available remedies of the Holders and evaluating possible courses of action.

### (b) Definitions

“**Default Date**” means the date on which a Relevant Default occurs.

“**Default Period**” means any period from (and including) a Default Date to (and including) the date on which all Relevant Defaults have been remedied or waived.

“**Holder Committee**” means any committee of Holders or, if more than one such committee has been constituted, the committee comprising Holders with the highest aggregate nominal amount of Bonds.

**“Relevant Default”** means an Event of Default, or any event specified in Condition [ ] (*Events of Default*) which would (with the giving of notice, the making of any determination or certificate under the Trust Deed or these Conditions or any combination of the foregoing) be an Event of Default.