

Determination Committee Decision

Date:	February 10, 2010
Determinations Committee:	Americas
Meeting Date:	February 10, 2010

DC Issue 2009100901:	Has a Restructuring Credit Event occurred with respect to Cemex S.A.B. de C.V.?	
1st Question for vote:	Do you agree that Section 3.3 of the Rules should be amended for purposes of DC Issue 2009100901 (the "CEMEX Matter") to permit the Convened DC for the CEMEX Matter to Resolve by Supermajority (a) to permit the Convened DC Member that submitted the obligations listed in Annex 1 below to withdraw its request; (b) to permit the Convened DC Member that submitted the challenge to the inclusion of the obligations listed below on the Supplemental List for the CEMEX Matter to withdraw its challenge; (c) to republish an Initial List for the CEMEX Matter that would contain all obligations on the Supplemental List for the CEMEX Issue that was published by the DC Secretary on February 3, 2010 and updated on February 4, 2010 but would exclude the obligations listed below and (d) to give Eligible Market Participants until 5pm (NYT) on Friday, February 12, 2010 the ability to request that any of the obligations listed below be added back onto the Supplemental List?	
Vote result:	Yes	
Votes:	15 'Yes' votes and 0 'No' votes	
	Bank of America / Merrill Lynch	Yes
	Barclays	Yes
	Citibank	Yes
	Credit Suisse	Yes
	Deutsche Bank AG	Yes
	Elliott Management Corporation	Yes
	Goldman Sachs	Yes
	JPMorgan Chase Bank, N.A.	Yes
	Legal & General Investment Management Limited	Yes
	Morgan Stanley	Yes
	Pacific Investment Management Company LLC	Yes
	Primus Asset Management, Inc.	Yes
	Rabobank International	Yes
	The Royal Bank of Scotland	Yes
	UBS	Yes

2nd Question for vote:	Do you agree to permit the actions in (a) through (d) above and to waive the requirement for a public comment period for purposes of this amendment to the Rules as required under Rule 5.2(e)?	
Vote result:	Yes	
Votes:	15 'Yes' votes and 0 'No' votes	
	Bank of America / Merrill Lynch	Yes
	Barclays	Yes
	Citibank	Yes
	Credit Suisse	Yes
	Deutsche Bank AG	Yes
	Elliott Management Corporation	Yes
	Goldman Sachs	Yes
	JPMorgan Chase Bank, N.A.	Yes
	Legal & General Investment Management Limited	Yes
	Morgan Stanley	Yes
	Pacific Investment Management Company LLC	Yes
	Primus Asset Management, Inc.	Yes
	Rabobank International	Yes
	The Royal Bank of Scotland	Yes
	UBS	Yes

3rd Question for vote:	Do you agree to the publication by the DC Secretary on behalf of the Convened DC for the CEMEX Matter of the statement in Annex 2 below on its Website in respect of these actions?	
Vote result:	Yes	
Votes:	15 'Yes' votes and 0 'No' votes	
	Bank of America / Merrill Lynch	Yes
	Barclays	Yes
	Citibank	Yes
	Credit Suisse	Yes
	Deutsche Bank AG	Yes
	Elliott Management Corporation	Yes
	Goldman Sachs	Yes
	JPMorgan Chase Bank, N.A.	Yes
	Legal & General Investment Management Limited	Yes
	Morgan Stanley	Yes
	Pacific Investment Management Company LLC	Yes
	Primus Asset Management, Inc.	Yes
	Rabobank International	Yes

	The Royal Bank of Scotland	Yes
	UBS	Yes

Annex 1

Dual currency notes affected:

ISIN or Other Description	Issuer Name	Coupon	Maturity or Initial Call Date	Currency
\$350mn Callable Perpetual Dual Currency Notes	New Sunward Holding Financial Ventures B.V.	6.196	12/31/2011	USD
\$750mn Callable Perpetual Dual Currency Notes	New Sunward Holding Financial Ventures B.V.	6.640	12/31/2014	USD
\$900mn Callable Perpetual Dual Currency Notes	New Sunward Holding Financial Ventures B.V.	6.722	12/31/2016	USD
€730mn Callable Perpetual Dual Currency Notes	New Sunward Holding Financial Ventures B.V.	6.277	6/30/2017	EUR

Annex 2

Statement:

As previously noted by ISDA on its website at <http://www.isda.org/companies/cemex/cemex.html>, ISDA has received a challenge to the inclusion on the Final List of Deliverable Obligations for the auction to be held for purposes of settling credit derivatives transactions referencing CEMEX, S.A.B. de C.V. (**CEMEX**) of each issuance of the Callable Perpetual Dual Currency Notes issued by New Sunward Holding Financial Ventures B.V. that was previously included on the Supplemental List of potential Deliverable Obligations for the CEMEX auction (the **Dual Currency Notes**).

A meeting of the Credit Derivatives Determinations Committee for the Americas that was convened to consider DC Issue 2009100901 (the **CEMEX DC**) was convened on February 10, 2010 to discuss the challenge to the Dual Currency Notes. The CEMEX DC acknowledged that in order to reach a resolution as to the deliverability of the Dual Currency Notes for purposes of the CEMEX auction, it may be necessary to significantly delay the current timeline for holding the CEMEX auction. It was noted that the Dual Currency Notes are currently held by a special purpose vehicle, and consequently the CEMEX DC considered the likelihood of any participant in the CEMEX auction delivering the Dual Currency Notes as part of the CEMEX auction to be low.

In order not to disrupt the current timing of the CEMEX auction and given the low likelihood of the Dual Currency Notes actually being delivered, the DC member that proposed the Dual Currency Notes for inclusion on the Initial List of potential Deliverable Obligations for purposes of the CEMEX auction notified the CEMEX DC that it would agree to withdraw its request that the Dual Currency Notes be included on the Final List of Deliverable Obligations for the CEMEX auction. Consequently, the DC member that submitted the challenge in respect of the Dual Currency Notes also notified the CEMEX DC that it would agree to withdraw its challenge. The CEMEX DC therefore resolved to allow the withdrawal of the request and the withdrawal of the challenge.

Please note that in doing so the CEMEX DC did not assess whether the Dual Currency Notes constitute Deliverable Obligations for purposes of the CEMEX auction.

The CEMEX DC has also resolved that the decision not to include the Dual Currency Notes on the Final List of Deliverable Obligation for purposes of the CEMEX auction should be subject to consultation with the wider market. As a result, any eligible market participant that wishes to re-submit the Dual Currency Notes for inclusion of the Final List of Deliverable Obligations for purposes of the CEMEX auction should notify ISDA at the following email address at or prior to **5 p.m. NYT Friday, February 12, 2010**:
DeliverableObligations@isda.org

In the event that no eligible market participant re-submits the Dual Currency Notes in accordance with the above, the Final List shall not include the Dual Currency Notes and it is anticipated that the CEMEX auction will take place in accordance with the current proposed timeline. In the event that an eligible market participant re-submits the Dual Currency Notes in accordance with the above, the CEMEX DC will resolve whether or not the Dual Currency Notes constitute Deliverable Obligations for purposes of the CEMEX auction and, in the event that the CEMEX DC is unable to reach a resolution in accordance with the Credit Derivatives Determinations Committees Rules, the question may be referred to external review which could significantly delay the holding of the CEMEX auction.