DECISION OF THE
EXTERNAL REVIEW PANEL
OF THE
DETERMINATIONS COMMITTEE
OF THE
INTERNATIONAL SWAPS AND DERIVATIVES ASSOCIATION, INC.

DC ISSUE: 2009-100901

Has a Restructuring Credit Event Occurred
With Respect to CEMEX, S.A.B. de C.V.?

The External Review Panel of the Determinations Committee of the International Swaps and Derivatives Association, Inc. considered the question (the "Reviewable Question") presented to it on Friday, December 4, 2009:

Has a Restructuring Credit Event occurred with respect to CEMEX, S.A.B. de C.V.?

The External Review Panel has concluded unanimously that "Yes" is "the better answer" to the Reviewable Question.

In considering the Reviewable Question, the External Review Panel reviewed Publicly Available Information presented to it by counsel. These materials are also available on ISDA's website under the "Determinations Committee and Credit Events" link on the home page. Capitalized terms used herein, unless otherwise defined herein, shall have the respective meanings as set forth in the 2003 ISDA Credit Derivatives Definitions (the "Definitions").

* * * * *

On August 14, 2009, CEMEX, S.A.B. de C.V. ("CEMEX") entered into a financing agreement with certain of its creditors (the "August 2009 Agreement"). Although the External Review Panel did not have access to this agreement, as it is not publicly available, CEMEX's public filings provide guidance about the substance of the August 2009 Agreement. According to Page S-3 of the Final Prospectus Supplement dated September 22, 2009 to the Prospectus dated September 8, 2009 (the "Prospectus"), filed by CEMEX with the United States Securities and Exchange Commission (the "SEC"), CEMEX entered into the August 2009 Agreement "…with our major creditors…" and the August 2009 Agreement "…extends the maturities of approximately $15.0 billion in syndicated and bilateral bank and private placement obligations…". On Page S-16 of the Prospectus, there is a reference to "…our existing bank facilities that are included in the [August 2009 Agreement]…".

It is clear from the language used in the Prospectus that the August 2009 Agreement related to existing indebtedness of CEMEX. The term "creditor" means a party to whom one owes a debt and the reference in the Prospectus to CEMEX entering into the August 2009 Agreement with "our major creditors" must refer to an agreement with parties to whom CEMEX already owes a debt. The use of the words "extends the maturities…of obligations…" and "…existing bank facilities…" supports this view. Furthermore, Page S-85 of the Prospectus states: "We and certain of our subsidiaries were obligors as borrowers or guarantors under our various credit facilities and other indebtedness prior to the effectiveness of the [August 2009 Agreement]. These obligations continue to be in full force and effect under the [August 2009 Agreement]."

Pursuant to Section 4.7(a)(iii) of the Definitions, a Restructuring Credit Event means, with respect to an Obligation, that all holders of the Obligation are bound by "a postponement or other deferral of a date or dates for either (A) the payment or accrual of interest or (B) the payment of principal or premium." Page S-5 of the Prospectus states that "[the August 2009 Agreement] extends the maturities of approximately U.S. $15.0 billion in syndicated and bilateral bank debt and private placement obligations … The extensions reduced the amount of debt due before December 2010 by approximately U.S. $3.9 billion and extended the weighted average life of our indebtedness as of June 30, 2009 by 1.4 years." The External Review Panel has determined consequently that a postponement or other deferral of a date or dates for the payment of principal has occurred with respect to the indebtedness of CEMEX to which the August 2009 Agreement relates.

CEMEX entered into a $1.2 billion revolving loan pursuant to the May 31, 2005 Credit Agreement (the "Revolver"). The External Review Panel has concluded, on the basis of the Publicly Available Information, that the Revolver was included in the bank debt subject to the August 2009 Agreement. According to the CEMEX Investor Presentation dated August 17, 2009, the only bank debt of CEMEX not included in the August 2009 Agreement was "Other Bank Debt" totaling $1.0 billion, an amount less than the $1.2 billion of the Revolver.

The External Review Panel relied on the plain meaning of Section 4.7 of the Definitions in its consideration of the Reviewable Question. The categorization or characterization of the August 2009 Agreement by CEMEX was not a dispositive factor for the External Review Panel.

* * * * *

After determining that the event described in Section 4.7(a)(iii) of the Definitions occurred with respect to the CEMEX indebtedness to which the August 2009 Agreement relates, the External Review Panel then considered whether such event occurred "…in circumstances where such event does not directly or indirectly result from a deterioration in the creditworthiness or financial condition of the Reference Entity" pursuant to Section 4.7(b)(iii) of the Definitions.

The External Review Panel has concluded that the August 2009 Agreement did result from a deterioration in the creditworthiness or financial condition of CEMEX. A deterioration in the creditworthiness of CEMEX is evidenced by the ratings downgrades that the company experienced in late 2008 and early 2009. Fitch downgraded CEMEX's credit rating from BBB- to BB+ on October 31, 2008 and from BB+ to B on March 10, 2009. Standard & Poor's downgraded CEMEX's credit rating from BBB- to BB+ on January 21, 2009 and from BB+ to B- on March 10, 2009. Further evidence of this deterioration can be seen in the June 29, 2009 audit report by KPMG, CEMEX's independent auditors, which stated that "[CEMEX's] ability to fulfill its short and long-term debt obligations that mature in 2009 is dependent on successfully completing their refinancing. This raises substantial doubt about the Company's ability to continue as a going concern." CEMEX itself noted, in its Form 20-F filed with the SEC on June 30, 2009, that its "liquidity and operating performance is being negatively affected by adverse economic and industry conditions" and that these factors and others "raise substantial doubt concerning CEMEX's ability to continue as a going concern." CEMEX also stated in its Form 20-F that its ability to meet its debt obligations was "dependent" on the outcome of the "bank debt refinancing process". Even though CEMEX's stock price rose and CEMEX's CDS spreads tightened during the period between March and August 2009, the External Review Panel has concluded that the August 2009 Agreement resulted from a deterioration in the creditworthiness or financial condition of CEMEX. The External Review Panel noted, for example, the statements made in the August 17, 2009 teleconference call by Hector Medina, CEMEX's Executive Vice President of Finance and Legal, that "[p]rior to [the August 2009 Agreement], we were facing unsustainable amortization requirements during 2009 to 2011" and by Lorenzo Zambrano, Chairman and CEO of CEMEX, that the August 2009 Agreement is an integral part of a strategy that would allow CEMEX to "regain…eventually our investment-grade capital structure".

*   *   *   *   *

The External Review Panel is cognizant of the possible effect its decision may have with respect to any future questions presented to the Determinations Committee. The External Review Panel wishes to emphasize that its decision should be limited to DC Issue 2009-100901 and that the External Review Panel is not the appropriate forum for any reconsideration of the language in Section 4.7 of the Definitions.

Rick Grove
David Schizer
Kimberly Summe