

Determinations Committee Decision

Date:	May 26, 2009
Determinations Committee:	Americas
Meeting Date:	May 26, 2009

DC Issue 2009043001:	Has a Failure to Pay Credit Event occurred with respect to Syncora Guarantee Inc. (fka XL Capital Assurance Inc.)?	
Question for vote	Should ISDA publish the below statement in connection with the Final List of Deliverable Obligations for the auction?	
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

Syncora Guarantee Inc. Auction Guidance - published May 26, 2009

In connection with the Auction scheduled to occur on Wednesday May 27, 2009 in respect of credit derivatives transactions referencing Syncora Guarantee Inc. ("Syncora"), the Credit Derivatives Determinations Committee for the Americas (the "DC") has, at the request of several market participants, resolved to publish this statement in order to facilitate the calculation of the outstanding principal balance of any Deliverable Obligation delivered pursuant to a transaction arising as a result of a Physical Settlement Request or Limit Order Submission placed in the Auction.

THE DC HAS PUBLISHED THIS STATEMENT SOLELY AS PRACTICAL GUIDANCE TO FACILITATE SETTLEMENT OF TRANSACTIONS ARISING OUT OF THE SYNCORA AUCTION. MARKET PARTICIPANTS ARE RESPONSIBLE FOR MAKING SUCH CALCULATIONS IN RESPECT OF THEIR OWN PHYSICAL SETTLEMENT REQUEST AND LIMIT ORDERS. THE DC DOES NOT PROVIDE ANY ASSURANCE THAT THE GUIDANCE DESCRIBED HERE WILL OR MUST BE PRECISELY FOLLOWED BY ANY MARKET PARTICIPANT, INCLUDING ANY DC MEMBER. Furthermore, there is no assurance that the DC will, in the future, publish guidance of this type.

The DC notes that all of the Deliverable Obligations on the Final List for the Syncora Auction are financial guarantee insurance policies issued by Syncora in respect of asset-backed securities. For each of these, the "outstanding principal balance," as that term is used in the 2003 ISDA Credit Derivatives Definitions, will therefore reflect the principal amounts owed or potentially owed by Syncora under those policies, rather than the principal amounts outstanding in respect of the asset-backed securities themselves. While generally equivalent in most circumstances, these two amounts may differ from one another where the issuer of an asset-backed security has failed to make a principal payment and the insurer has failed to pay on claims in respect of that amount. This situation has occurred in respect of several of the Deliverable Obligations. PLEASE NOTE, therefore, that, in specifying an outstanding principal balance in a NOPS, it may be necessary to add the amount of insurance payments past due to the amount of the relevant certificate principal balance.

Some market participants have noted that the market convention for denoting the outstanding principal balance of certain asset-backed securities is to cite the principal factor. These principal factors, however, do not take account of whether any relevant financial insurer has made any principal payments that the issuer of the asset-backed security failed to make.

In order to determine the outstanding principal balance for any Deliverable Obligation under a credit derivative referencing Syncora, market participants may therefore need to add to the stated certificate principal balance the amount of any claims owed but unpaid by Syncora in respect of that particular security. This may, in some cases, be achieved by adding certain of the figures listed as "losses" to the stated principal balance factor for the relevant asset-backed security. Some of the servicer reports for the relevant asset-backed security may state the amount owed but unpaid by the issuer and/or the insurer on a cumulative, rather than month to month basis. Where the report does not do so, market participants may consider taking the following steps:

- 1) Check the Bloomberg screen shot for the note.
- 2) If the Bloomberg screen shot shows a monthly loss breakdown, refer to the servicer report for the loss month. The relevant servicer report should show whether Syncora made good on the loss. For example, the Bloomberg page "Mtge CPD" for the Deliverable Obligation BSSP 2007-R5 Class A1 (CUSIP 12587PEM8) shows a monthly breakdown of losses. BSSP 2007-R5 Class A1 had losses for 12/08, 2/09 and 4/09. The servicer report for 2/09 shows that Syncora made good on the full amount of the loss because the identical loss number appears in the line item "Insurance Policy Funds included in Principal Distribution". By contrast, the first page of the servicer report for 4/09 report shows 0\$ in that same line item, indicating that Syncora didn't cover the 4/09 loss amount. That 4/09 loss amount should therefore be 'added' to the 102MM balance (note that the 102MM balance matches the balance shown on Bloomberg) to

yield the maximum outstanding principal balance for delivery. Market participants should contact the trustee for the relevant bond to receive copies of servicer reports if they do not already have them.

3) If the Bloomberg screen shot only shows a cumulative loss breakdown, a market participant will need to go through monthly reports going back to the note's issue date to determine definitively whether any amounts are owing from Syncora above the stated certificate principal balance.

In order to minimize breaks, parties intending to deliver specific bonds into Physical Settlement Requests or Limit Order Submissions may wish to consult with their Participating Bidder counterparty as to the specific calculation, particularly for bonds that have recently missed payments (including any payments that might have been due today).