

Summary:

This information is provided as a supplement to the general interest question submitted to ISDA on December 19, 2014, and is not a separate submission.

December 15, 2014 was both an interest payment date and a principal payment date for the 10.00% Second-Priority Senior Secured Notes due 2018 and the 10.00% Second-Priority Senior Secured Notes due 2015 (collectively, the “Notes”) issued by the Reference Entity.

A Failure to Pay Credit Event has occurred with respect to the Reference Entity for two alternative, and independently sufficient, reasons.

First, a Failure to Pay Credit Event occurred because the Reference Entity failed to pay principal when due as required under the clear terms of the indenture (the “Indenture”) governing the Notes, as it did not pay all of the interest and principal owed on December 15, 2014, in direct violation of an explicit provision establishing that a payment is deemed made only if all amounts of principal and interest due on such date are fully funded.

Second, a Failure to Pay Credit Event occurred as a result of the required pro rata application by the Trustee of the amount funded as between principal and interest, which resulted in the availability of insufficient funds to constitute a payment in full of principal owed on December 15, 2014.

Rationale for First Basis of Failure to Pay Credit Event:

On December 15, 2014, as set forth in its Form 8-K filed December 17, 2014, the Reference Entity remitted funds in respect of the amount of principal owed, but did not remit any funds in respect of the amount of interest owed.

Section 4.01 of the Indenture states that “[a]n installment of principal of or interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds as of 12:00 p.m. Eastern time money sufficient to pay ***all*** principal and interest then due....” (Emphasis added.)

Pursuant to Section 4.01, in the event ***all*** principal and interest then due is not paid, as was the case here, neither principal nor interest is considered paid, and therefore, a “default” for failure to pay principal occurs under the Indenture.

Notably, the occurrence of a Failure to Pay Credit Event under these circumstances pursuant to Section 4.01 of the Indenture does not depend on the manner in which funds were applied by the Trustee or the validity of the various additional defaults previously asserted by the second lien bondholders, and it is not necessary (or relevant) to make any determination of the validity of these additional defaults or the Trustee’s application of funds.

Section 6.01(b) of the Indenture states that a default in payment of principal, whether upon a required repurchase or otherwise, has no grace or cure period, and constitutes an “Event of Default”.

A total payment of \$58,902,000 was due on December 15, 2014. As this amount was not received in full, under Section 4.01 of the Indenture neither principal nor interest is considered paid. Thus, the Payment Requirement (as defined under the 2003 Credit Derivatives Definitions

or the 2014 Credit Derivatives Definitions) of \$1,000,000 is satisfied as \$17,631,000 of principal and \$41,271,000 of interest was not paid when due.

Thus, after the lapse of the three Grace Period Business Days required under Section 1.12(a)(iii) of the 2003 Credit Derivatives Definitions or Section 1.46(c) of the 2014 Credit Derivatives Definitions, a Failure to Pay Credit Event occurred.

Interpretation is consistent with Indenture and with the ABA Model Indenture Commentary:

General principles of contract interpretation require contractual provisions to be interpreted on their face in the absence of specific contradictory or conflicting language. Here, the Indenture has no provisions inconsistent with the above analysis. To the contrary, Section 6.10 of the Indenture requires that following an Event of Default, all amounts collected by the Trustee and any other money or property then distributable (which amounts include, but are not limited to, the amounts received by the Trustee from the Reference Entity) must be allocated ratably between principal and interest. This is entirely consistent with the intent of Section 4.01, as both sections serve to prevent an issuer from cherry-picking between payments of interest and principal.

Further, the Revised Model Simplified Indenture, Ad Hoc Committee for Revision of the 1983 Model Simplified Indenture, Copyright (c) 2000 by the American Bar Association, which is the basis for the construction of many indentures, fully supports this as the unambiguous meaning of the language of the Indenture. Among other things, it specifically states that pursuant to Section 4.01, the issuer must “deposit an amount sufficient to pay all principal and interest due on the particular date, not (for example) just enough to pay principal and interest on Securities called for redemption if other amounts are due on the same date.”

Rationale for Second Basis of Failure to Pay Credit Event:

As noted in the submission to ISDA on December 19, 2014, in addition to the foregoing, the Trustee’s pro rata application of funds to principal and interest, as required by Section 6.10 of the Indenture, has resulted in a deficiency of payment on principal, which also independently triggers a Failure to Pay Credit Event.

As a result of the Trustee’s pro rata application of funds to principal and interest, over \$12 million of principal remains due, owing and unpaid on the 10% Second Priority Senior Secured Notes due 2018, which amount satisfies the Payment Requirement (as defined under the 2003 Credit Derivatives Definitions or the 2014 Credit Derivatives Definitions) of \$1,000,000.

The Trustee’s application of principal and interest in accordance with Section 6.10 of the Indenture is appropriate either as a result of the Event of Default occurring pursuant to Section 4.01, as discussed previously, or as a result of the Event of Default occurring due to the lapse of grace periods for the defaults set forth in the Notice of Default submitted by or on behalf of the second lien bondholders of the Reference Entity.

Notably, by choosing to allocate between principal and interest in accordance with Section 6.10 of the Indenture, plainly and necessarily the Trustee determined the validity of at least one default, and thus a review of the merits of such defaults by the ISDA Determinations Committee is unnecessary to determine that a Failure to Pay Credit Event has occurred.