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

DC ISSUE: 2014-122202

Has a Failure to Pay Credit Event Occurred
With Respect to Caesars Entertainment Operating Company, Inc.?

SUBMISSION TO EXTERNAL REVIEW PANEL ON BEHALF OF
"NO" POSITION

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I. INTRODUCTION

Caesars Entertainment Operating Company, Inc. ("CEOC" or the "Issuer") is the "Reference Entity" with respect to various CDS contracts. The question before the External Review Panel (the "Panel") of the Determinations Committee of the International Swaps and Derivatives Association, Inc. ("ISDA") is straightforward – did a Failure to Pay Credit Event (as defined under the ISDA Credit Derivatives Definitions)[1] occur as of December 18, 2014 with respect to CEOC?

The Panel should answer this question in the negative for the reasons set forth in detail in this Brief. In sum:

(1) On December 15, 2014, the Issuer effected a mandatory redemption of a portion of the Notes (as defined below). Redemptions of the Notes are governed by the requirements of Article III (*Redemption*) of the Indenture (as defined below). Publicly Available Information (as defined in the Definitions) "reasonably confirms" that the Issuer complied with Article III (*Redemption*) in connection with the December 15 payment.

(2) On the same day, the Issuer failed to pay scheduled interest, but this missed interest payment is subject to a 30-day grace period provided under the Indenture and consistent with market convention.

(3) The Indenture (and specifically Section 4.01 (*Payment of Notes*) thereof) does not require redemption payments to be accompanied by a payment of **all** interest then due on the portion of Notes not subject to the redemption. Such a requirement (a)

[1] The substantial majority of CDS contracts referencing CEOC are based on the 2003 ISDA Credit Derivatives Definitions, as supplemented by the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement thereto (published on July 14, 2009) (the "2003 Definitions"). A minority of CDS contracts referencing CEOC are based on the 2014 ISDA Credit Derivatives Definitions (the "2014 Definitions," and, together with the 2003 Definitions, the "Definitions"). For purposes of this Brief, the relevant definitions are interchangeable under both sets of Definitions.

would nullify the 30-day grace period for interest payments, (b) would be inconsistent with other provisions in the Indenture, and (c) is not supported by analogy to the ABA Model Indenture (as defined below), which contains materially different language than the Indenture.

While the Convened DC has Resolved (each as defined in the ISDA Credit Derivatives Determinations Committee Rules, dated September 16, 2014 (the "DC Rules")) that a Bankruptcy Credit Event (as defined in the Definitions) occurred on January 15, 2015, the question before the Panel would affect CDS contracts with a scheduled termination date of December 20, 2014 (*i.e.*, prior to the Bankruptcy Credit Event).

II. FACTUAL BACKGROUND

CEOC is the issuer of senior secured bonds, junior secured bonds and unsecured bonds. In particular, CEOC issued 10% Second-Priority Senior Secured Notes due 2015 and 10% Second-Priority Senior Secured Notes due 2018 (together, the "Notes") pursuant to an Indenture, dated as of December 24, 2008 (as supplemented, the "Indenture").

A. Noteholders Are Entitled to Three Types of Payments Under the Indenture.

Terms of each series of Notes are set forth in the Indenture and the respective Note (a form of which is attached as an exhibit to the Indenture).[2] Under the Indenture and the Notes, the Issuer is required to make three types of payments.

Interest Payments: First, on every June 15 and December 15, the Issuer is required to make semi-annual installment payments of interest. Section 6.01(a) of the Indenture provides for a grace period of 30 days for such interest payments before a failure to pay interest ripens into an Event of Default (as defined under the Indenture).

[2] The Indenture includes the following Forms of Note: (i) a "Form of Initial 2018 Note" as exhibit A-1, (ii) a "Form of Initial 2015 Note" as exhibit A-2, (iii) a "Form of 2018 Exchange Note" as exhibit B-1, and (iv) a "Form of 2015 Exchange Note" as exhibit B-2.

Principal Payment at Maturity: Second, the Issuer is required to make one installment payment of principal upon the stated maturity of the Notes. Section 6.01(b) of the Indenture provides no grace period for this principal payment upon maturity.

Redemptions: Third, the Indenture and the Notes provide for a number of redemptions and repurchases, including optional redemption at the Issuer's election as well as mandatory repurchase, *e.g.*, in the event of an asset sale or change in control, each as set forth in the Indenture or the Notes. At issue in the review by this Panel is Paragraph 6 (*Mandatory Redemption*) of each Note[3] issued under the Indenture, which requires mandatory redemptions in connection with a tax characterization:

> If the [2018/2015] Notes would otherwise constitute "applicable high yield discount obligations" within the meaning of 163(i)(1) [*sic*] of the [Internal Revenue] Code, at the end of each accrual period ending after the fifth anniversary of the [2018/2015] Notes' issuance (each, an "AHYDO redemption date" [*sic*]), the Issuer will be required to redeem for cash a portion of each [2018/2015] Note then outstanding equal to the "Mandatory Principal Redemption Amount" (such redemption a "Mandatory Principal Redemption"). The redemption price for the portion of each [2018/2015] Note redeemed pursuant to a Mandatory Principal Redemption will be 100% of the principal amount of such portion plus any accrued interest thereon on the date of redemption. The "Mandatory Principal Redemption Amount" means the portion of a [2018/2015] Note that must be required to be redeemed to prevent such [2018/2015] Note from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i)(1) of the Code.

In this Brief, we refer to the redemption price as defined in Paragraph 6 (*Mandatory Redemption*) of each Note as the "Redemption Price" and the redemption of the Notes and payment of the Redemption Price pursuant to Paragraph 6 (*Mandatory Redemption*) as the "Mandatory Principal Redemption."

Section 6.01(b) of the Indenture provides that an Event of Default occurs upon "*a default in payment of principal … of any Note … when due at its maturity, upon optional redemption,*

[3] The terms of Paragraph 6 of each Note are identical for purposes of this Brief.

upon required repurchase, upon declaration or otherwise." Therefore there is no grace period for a failure to make a Mandatory Principal Redemption on an AHYDO redemption date.

B. Events of December 2014

On December 15, 2014, the Issuer was required to make a scheduled interest payment as well as to effect a Mandatory Principal Redemption under the Notes. As set forth in the Americas Credit Derivatives Determinations Committee Caesars Entertainment Operating Company, Inc. External Review Reviewable Question and Statement of Facts (the "Statement of Facts"),[4] CEOC disclosed in two Current Reports on Form 8-K filed with the U.S. Securities and Exchange Commission that (1) CEOC elected not to make certain interest payments due December 15, 2014, including those due on the Notes,[5] and (2) on December 12, 2014, CEOC deposited funds with the Paying Agent under the Indenture in an amount sufficient to fund the payment of the redemption price and directed the Paying Agent to apply the deposited funds to pay the redemption price on December 15, 2014.[6]

The Trustee under the Indenture published a notice (the "Trustee Notice")[7] stating that $17,631,000.00 was due on December 15, 2014, in connection with the Mandatory Principal Redemption, and acknowledging that the Paying Agent had received $18,513,390.00 from the Issuer in connection with the December 15 payment obligations.[8]

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[4] The Statement of Facts is available at *http://dc.isda.org/documents/2015/01/caesars-external-review-reviewable-question-and-statement-of-fact.pdf* (last accessed on February 2, 2015).

[5] See CEOC Current Report on Form 8-K, dated December 15, 2014, available at *http://www.sec.gov/Archives/edgar/data/858395/000119312514442780/d838081d8k.htm* (the "December 15 8-K") (last accessed on February 2, 2015).

[6] See CEOC Current Report on Form 8-K, dated December 16, 2014, available at *http://www.sec.gov/Archives/edgar/data/858395/000119312514444240/d838888d8k.htm* (the "December 16 8-K") (last accessed on February 2, 2015).

[7] The Trustee Notice is available at *http://dc.isda.org/documents/2014/12/delaware-trust_caesars_notice-to-holders_december-15-2014-v1-2.pdf* (last accessed on February 2, 2015).

[8] Presumably, the payment of $18,513,390 included $17,631,000 of principal amount of the Notes being redeemed plus approximately $900,000 of accrued interest.

C. Other Key Provisions of the Indenture

As the "Event Publicly Available Information"[9] indicates, the primary basis for a Failure to Pay Credit Event relied upon by proponents of a "Yes" answer to the Reviewable Question is Section 4.01 (*Payment of Notes*) of the Indenture. It provides, in relevant parts:

> The Issuer shall promptly pay the principal of and interest on the Notes on the dates and in the manner provided in the Notes and in this Indenture. An installment of principal of [*sic*] 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.)

D. Relevant CDS Definitions

"Failure to Pay" is defined under the Definitions as:

> after the expiration of any applicable Grace Period (after the satisfaction of any conditions precedent to the commencement of such Grace Period), the failure by the Reference Entity to make, when and where due, any payments in an aggregate amount of not less than the Payment Requirement under one or more Obligations, in accordance with the terms of such Obligations at the time of such failure.

Under the DC Rules, the Convened DC, and therefore this Panel, may only review Publicly Available Information (as defined in the Definitions) as modified by Section 2.1(b) of the DC Rules.

"Publicly Available Information" is, in relevant parts:

> information that reasonably confirms any of the facts relevant to the determination that the Credit Event … has occurred and which … (ii) is information received from or published by (A) a Reference Entity … or (B) a trustee, … paying agent … for an Obligation, … (iv) is information contained in any … filing … filed with a… regulatory authority.

III. THE REVIEWABLE QUESTION

The Convened DC was initially presented with two questions:

[9] The "Event Publicly Available Information" is published by ISDA and available at *http://dc.isda.org/cds/caesars-entertainment-operating-company-inc-2/* and *http://dc.isda.org/cds/caesars-entertainment-operating-company-inc-4/* (last accessed on February 2, 2015).

First, "*Has a Failure to Pay Credit Event occurred in connection with the terms of the Indenture for any reason … other than the reason identified in the [second question below]*?"

Second, "*Has a Failure to Pay Credit Event occurred because of the pro-rata application by the Trustee (under the Indenture) of the amounts received from the issuer in accordance with Section 6.10 of the Indenture following receipt of a notice of event of default by the Trustee relating to the alleged October 15 defaults (which defaults were disputed by the Reference Entity in an 8-K filed December 16, 2014)?*"

The Convened DC Resolved by unanimous vote that the answer to the second question was "No," and by a 10-to-5 vote that the answer to the first question was also "No."

The Reviewable Question (as defined under the DC Rules) currently before this Panel is as follows:

> Has a Failure to Pay Credit Event occurred on December 18, 2014 in respect of the Reference Entity as a result of (a) a principal redemption amount (which included accrued interest due thereon) and an interest coupon payment in each case being scheduled as due on December 15, 2014, and (b) the Reference Entity depositing funds with the paying agent equal to such principal redemption amount and not depositing such interest coupon payment?

The Panel should answer the Reviewable Question in the negative.

IV. A FAILURE TO PAY CREDIT EVENT DID NOT OCCUR ON DECEMBER 18, 2014, BECAUSE THE ISSUER COMPLIED WITH ARTICLE III (*REDEMPTION*) OF THE INDENTURE. SECTION 4.01 (*PAYMENT OF NOTES*) OF THE INDENTURE DOES NOT MANDATE A DIFFERENT RESULT.

A Failure to Pay Credit Event did not occur on December 18, 2014, because the Issuer effected the Mandatory Principal Redemption in full compliance with Article III (*Redemption*) of the Indenture.[10] Section 4.01 (*Payment of Notes*) of the Indenture does not mandate a different result. The second sentence of Section 4.01 (*Payment of Notes*) does not apply to a Mandatory

[10] Due to the 30-day grace period applicable to interest payments, the Issuer's failure to pay the interest due on December 15, 2014, would not become a Failure to Pay Credit Event until January 14, 2015, well after the Credit Event Resolution Request Date. This Panel, therefore, should only be concerned with the question as to whether the Issuer has failed to pay the principal of the Notes on December 15, 2014.

Principal Redemption because that sentence only applies to "an installment of principal or interest," and the Redemption Price is not "an installment of principal or interest." Even if, for the sake of argument, the second sentence of Section 4.01 (*Payment of Notes*) were read to apply to the Redemption Price, that sentence must be read as providing a method for the Issuer to comply with its payment obligations, and not as an independent trigger for default. This is the only reading that honors and gives effect to the other provisions of the Indenture, in particular Sections 6.01 (*Events of Default*) and 6.10 (*Priorities*). Further, even if the second sentence of Section 4.01 (*Payment of Notes*) were construed to establish a standard for the satisfaction of payment obligations in general, including redemption payments, it would conflict with, and must yield to, other provisions in the Indenture specifically addressing redemptions, such as Article III (*Redemption*) and Section 2.09 (*Outstanding Notes*), in the context of a Mandatory Principal Redemption.

A. The Issuer Timely Made the Mandatory Principal Redemption Pursuant to the Terms of Article III (*Redemption*) of the Indenture, Which Governs Redemptions.

As indicated in the Issuer's December 16 8-K, the payment due on December 15, 2014 was the Redemption Price payable under the Mandatory Principal Redemption provisions of the Notes. The Indenture draws a clear distinction between (1) redemptions of principal (together with accrued interest thereon) and (2) installment payments of principal or interest. Article III (*Redemption*) of the Indenture supplies comprehensive provisions with respect to redemptions. Section 3.02 (*Applicability of Article*) under that Article provides, "*[r]edemptions of Notes ... required by any provision of this Indenture, shall be made in accordance with such provision and this Article [III]*."

In connection with a redemption, Section 3.07 (*Deposit of Redemption Price*) of the Indenture requires the Issuer to deposit "*money sufficient to pay the redemption price of and*

accrued interest on all Notes or portions thereof to be redeemed on that date …." Paragraph 6 (*Mandatory Redemption*) of the Notes further provides that the Redemption Price payable in connection with a Mandatory Principal Redemption is 100% of the principal amount of the Notes so redeemed plus accrued interest thereon. **The Issuer did precisely that and stated so in its December 16 8-K.** With respect to the Mandatory Principal Redemption, neither Article III (*Redemption*) of the Indenture nor Paragraph 6 (*Mandatory Redemption*) of the Notes requires the Issuer to pay all interest then due on the portion of Notes that are not subject to the redemption.

B. The Second Sentence of Section 4.01 (*Payment of Notes*) Does Not Apply to a Mandatory Principal Redemption.

The second sentence of Section 4.01 (*Payment of Notes*) provides that "*[a]n installment of principal of [*sic*] or interest shall be considered paid on the date due if on such date the Trustee or the Paying Agent holds … money sufficient to pay all principal and interest then due ….*" **Critically, the payment requirement of Section 4.01(*Payment of Notes*) only applies to "an installment of principal or interest." An installment of principal is generally understood to mean a scheduled periodic payment, such as an amortization payment, and not a redemption**.[11] Under the Indenture, the Issuer has an obligation to repay the entire principal amount of the Notes at their stated maturity, in a single installment of principal, and to make semi-annual installment payments of interest.

The Redemption Price for a Mandatory Principal Redemption is not "an installment" of principal or interest. The Redemption Price is defined under Paragraph 6.b of the Note as the Mandatory Principal Redemption Amount plus any accrued interest on the redeemed Notes.

[11] Black's Law Dictionary, 10th ed., defines an "installment" as a "*periodic partial payment of a debt*." Merriam-Webster Online, *available at* http://www.merriam-webster.com/dictionary/installment (last accessed February 2, 2015), defines an "installment" as "*one of the parts into which a debt is divided when payment is made at intervals*."

"Mandatory Principal Redemption Amount," in turn, is defined as the amount of Notes that "*must be required to be redeemed to prevent such [2018/2015] Note from being treated as an 'applicable high yield discount obligation'*" for tax purposes. In other words, this amount must be sufficient to reduce the accrued original issue discount on the Notes (minus previously cash-paid original issue discount) after the fifth anniversary of the issuance of the Notes to an amount below the product of the original issue price and yield to maturity. For any given accrual period, the Mandatory Principal Redemption Amount, and therefore the Redemption Price, may be zero or a positive amount, varying from accrual period to accrual period depending on whether, and to what extent, the accrued original issue discount exceeds the product of the original issue price and yield to maturity, without giving effect to the redemption. **As such, the Issuer's obligation to pay any Redemption Price is both contingent and variable. It is neither scheduled nor periodic, and therefore cannot be considered an "installment" of principal or interest governed by Section 4.01 (*Payment of Notes*) of the Indenture.**

The word "installment" in Section 4.01 (*Payment of Notes*) of the Indenture cannot be ignored.[12] It is of particular importance because the same provision in the American Bar Association Revised Model Simplified Indenture ("ABA Model Indenture")[13] upon which the Event Publically Available Information relies, does not include the word "installment." The ABA Model Indenture provision simply provides "*[p]rincipal and interest shall be considered paid on the date due if the Paying Agent holds in accordance with this Indenture on that date*

[12] Even Section 4.01 (*Payment of Notes*) itself makes clear and deliberate use of the word "installment." While the second sentence of Section 4.01 (*Payment of Notes*) applies only to an "installment of principal [ ] or interest," the first sentence applies to "the principal of" a Note, and the second paragraph of Section 4.01 (*Payment of Notes*) applies to any "overdue principal" (installment or otherwise) and "overdue installments of interest." In other words, the parties to the Indenture were selective in their use of the word "installment," and that selectivity should be honored.

[13] "Revised Model Simplified Indenture, 55 Bus. Law. 1115 (2000).

money sufficient to pay all [p]rincipal and interest then due ...."[14] Adding the word "installment" in the Indenture to modify "principal or interest" evidences the parties' intent to include **only** scheduled periodic payments of principal and interest, and thereby exclude any contingent and variable Redemption Price payable in connection with any Mandatory Principal Redemption. At a minimum, this distinction in wording disrupts any analogy to, or reliance upon, the commentary to the ABA Model Indenture (the "ABA Model Indenture Commentary").

C. Alternatively, Even if Section 4.01 (*Payment of Notes*) of the Indenture Applied to a Mandatory Principal Redemption, the Section Must be Read Together With Other Provisions of the Indenture, Including Sections 6.01 (*Events of Default*) and 6.10 (*Priorities*), and Construed to Give Effect to Each Provision.

Alternatively, even if the Panel assumes, for arguments' sake, that Section 4.01 (*Payment of Notes*) of the Indenture applied to a Mandatory Principal Redemption, Section 4.01 (*Payment of Notes*) must be read and interpreted consistently with the other provisions of the Indenture, in particular, Sections 6.01 (*Events of Default*) and 6.10 (*Priorities*). Under New York law,[15] "*[t]he rules of construction of contracts require us to adopt an interpretation which gives meaning to every provision of a contract or, in the negative, no provision of a contract should be left without force and effect.*" Muzak Corp. v. Taft Corp., 1 N.Y.2d 42, 46 (1956). "*An interpretation that gives effect to all the terms of an agreement is preferable to one that ignores terms or accords them an unreasonable interpretation.*" Ruttenberg v. Davidge Data Systems Corp., 626 N.Y.S.2d 174, 177 (1st Dep't 1995).

Section 4.01 (*Payment of Notes*) of the Indenture establishes (1) in the first sentence, the Issuer's obligation to pay both principal and interest when due, and (2) in the second sentence, the manner in which a payment by the Issuer is deemed to have satisfied the obligation to pay

[14] Id., at 1133.
[15] New York law governs the Indenture per Section 13.09 of the Indenture.

principal and interest when due. There is no question that the payment covenant contained in the first sentence of Section 4.01 (*Payment of Notes*) is breached as the Issuer failed to make the scheduled interest payment on December 15, 2014. The only question is whether this constitutes a breach of a covenant to pay interest only (which is subject to a 30-day grace period), or also a breach of the covenant to pay principal, **even though the principal amount due was actually paid**. The second sentence of Section 4.01 (*Payment of Notes*) does **not** answer that question.

The second sentence of Section 4.01 (*Payment of Notes*) is not a covenant that can be breached by the Issuer, but rather a description of how and when the obligation to pay principal and interest will be deemed satisfied. It states: "*[a]n installment of principal … shall be considered paid on the date due if on such date the Trustee … holds as of 12:00 p.m. Eastern time money sufficient to pay all principal and interest then due.*" (Emphasis added.) Contrast this language to Section 3.07 (*Deposit of Redemption Price*) of the Indenture, which provides that "*[w]ith respect to any Notes, prior to 10:00 a.m., New York City time, on the redemption date, the Issuer shall deposit with the Paying Agent … money sufficient to pay the redemption price of and accrued interest on all Notes … to be redeemed*…." (Emphasis added.) Section 3.07 (*Deposit of Redemption Price*) imposes a covenant; the second sentence of Section 4.01 (*Payment of Notes*) merely prescribes a method for determining whether and when a payment is deemed to have been made.

The second sentence of Section 4.01 (*Payment of Notes*) cannot provide a trigger for Issuer default. Instead it provides certainty to the Issuer by prescribing a method to comply with payment obligations in respect of principal or interest. If the Issuer deposits with the Trustee or Paying Agent sufficient funds to pay both principal and interest, then it will have unquestionably satisfied its payment obligations. But the inverse is not true. The sentence does not provide the

logical consequences for the event where the Issuer does not deposit sufficient funds to pay both principal and interest.[16]

This reading is consistent with, and gives effect to, other provisions of the Indenture, in particular Sections 6.01 (*Events of Default*) and 6.10 (*Priorities*). Section 6.01 (*Events of Default*) of the Indenture provides for a 30-day grace period for interest payments but no grace period for principal payments. An Event of Default would not occur as a result of the Issuer's failure to pay interest due unless that failure continues for 30 days, but an Event of Default would occur immediately upon the Issuer's failure to pay principal due. Consistent with market convention, the parties to the Indenture clearly intended to treat interest and principal payments differently in this important respect. **If one were to read Section 4.01 (*Payment of Notes*) of the Indenture to mean that in the event that the Issuer does not pay the full amount of both interest and principal, it is deemed to have immediately failed to pay each, then the Issuer would not receive the benefit of the 30-day grace period where, as here, it has paid the Redemption Price due at redemption, but not the interest due on the Notes not subject to the redemption**. As the ABA Model Indenture Commentary indicates, a grace period (of 30 days) for interest payments is standard for corporate bond indentures. This Indenture adopts the 30-day grace period for interest payments. Section 4.01 (*Payment of Notes*) cannot be read to override both the clear language of the Indenture and the market convention.

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[16] The argument proffered in the "Event Publicly Available Information" suffers the basic logical fallacy of "denying the antecedent." According to that argument:

> 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*…." 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….

The logical fallacy of asserting that "because if A then B, therefore if not A then not B" cannot be the basis for a Failure to Pay Credit Event.

Section 6.10 (*Priorities*) of the Indenture provides, among other things, that any money collected under the Indenture from the Issuer after an Event of Default shall be applied (after paying and indemnifying the Trustee) "*to the holders for amounts due and unpaid on the Notes for principal … and interest, ratably, without preference or priority of any kind, according to the amounts due and payable on the Notes for principal and interest, respectively*…." Since this rule of fund application applies only after an Event of Default, which is not applicable here, a pre-default payment, by implication, is not required to be allocated between principal and interest ratably, and may be allocated to principal payment only.[17] To read Section 4.01 (*Payment of Notes*) of the Indenture as triggering a default in both principal and interest payment obligations when the Issuer pays the principal due but not the scheduled interest would render this implied meaning of Section 6.10 (*Priorities*) of no effect.

D. Further, Even if the Second Sentence of Section 4.01 (*Payment of Notes*) Were Interpreted to Set Out a Redemption Payment Standard, It Would Conflict with, and Must Yield to, Redemption-Specific Provisions Under the Indenture, Including Sections 3.07 (*Deposit of Redemption Price*) and 2.09 (*Outstanding Notes*).

Further, even if the second sentence of Section 4.01 (*Payment of Notes*) were interpreted to set out a payment standard, it would apply to all payments under the Indenture and the Notes generally, not just redemption payments, and it would conflict with other sections of the Indenture that specifically address the redemption of a Note, including Sections 3.07 (*Deposit of Redemption Price*) and 2.09 (*Outstanding Notes*). Under New York law, where there is "*an inconsistency between a specific provision and a general provision of a contract…the specific provision controls.*" Muzak Corp., at 46. As discussed above, Article III (*Redemption*) of the

[17] The Convened DC's Resolution as to the Second Question necessarily implies the view that there has not been an Event of Default under the Indenture which would trigger the application of Section 6.10 (*Priorities*), or at a minimum, that there is insufficient Publicly Available Information to determine whether an Event of Default occurred.

Indenture supplies comprehensive treatment of redemptions, whether optional or mandatory. Section 3.07 (*Deposit of Redemption Price*), in particular, provides a different standard of payment in relation to redemptions than Section 4.01 (*Payment of Notes*) by requiring the Issuer to deposit funds sufficient to pay principal and interest due on the portion of the Notes subject to the redemption, and making no mention of any scheduled interest due on other Notes. The standard set out in the more specific redemption provisions under Article III (*Redemption*) of the Indenture, and not the general payment provision under Section 4.01 (*Payment of Notes*), must control with respect to payments in connection with a redemption such as the Mandatory Principal Redemption.

The conflict with Section 4.01 (*Payment of Notes*) is even more pronounced in Section 2.09 (*Outstanding Notes*) of the Indenture, which sets forth the rules regarding the circumstances under which the Notes will cease to be outstanding following a redemption or maturity. Section 2.09 (*Outstanding Notes*) provides that

> [i]f a Paying Agent segregates and holds in trust, … on a redemption date or maturity date money sufficient to pay all principal and interest payable on that date with respect to the Notes (or portions thereof) to be redeemed or maturing, as the case may be, … then on and after that date such Notes (or portions thereof) cease to be outstanding and interest on them ceases to accrue.

Since the Issuer deposited money sufficient to pay the Redemption Price in connection with the Mandatory Principal Redemption (which included accrued interest owed on the Notes being redeemed), that portion of the Notes is no longer outstanding. It would be a contradiction to contend that the Redemption Price had not been paid due to Section 4.01 (*Payment of Notes*) of the Indenture, but that the Notes ceased to be outstanding under Section 2.09 (*Outstanding Notes*). **Notes cannot cease to be outstanding while the redemption payments have not been made in full.** Again, in accordance with the rules of contract interpretation under New York

law, the specific provision – Section 2.09 (*Outstanding Notes*) – should control in respect of the Mandatory Principal Redemption.

V. PUBLICLY AVAILABLE INFORMATION DOES NOT "REASONABLY CONFIRM" THE FACTS RELEVANT TO A FAILURE TO PAY CREDIT EVENT DETERMINATION

A Failure to Pay Credit Event could only have occurred on December 18, 2014 if, on December 15, 2014, the Issuer failed to make a principal payment, when and where due, in accordance with the terms of the Notes. Publicly Available Information does not "reasonably confirm" those facts.

As discussed above and stated in the Statement of Facts, the December 15 8-K and the December 16 8-K collectively confirm that the Issuer had (1) elected not to pay the interest due on the Notes, but (2) paid the Redemption Price on a timely basis. CEOC states in its December 16 8-K:

> The deposit of the redemption price with the Paying Agent on December 12, 2014 satisfied in full CEOC's obligation to pay the redemption price under the December 2008 Indenture. CEOC is not aware of any legitimate basis to claim that it is in default of its obligations to pay the redemption price under the December 2008 Indenture.

The Trustee Notice states that a Mandatory Principal Redemption of $17,631,000 and a scheduled interest payment of $41,271,000 were due on the Notes on December 15, 2014, and acknowledges that $18,513,390.00 was received from the Issuer in respect of the December 15 payment obligations.[18] Accordingly, Publicly Available Information from both the Issuer and the Trustee confirms that the Issuer deposited funds sufficient for the Redemption Price.

On the other hand, Publicly Available Information does confirm that the Issuer failed to make a scheduled interest payment on the Notes due on December 15, 2014. However, since the

[18] While the Trustee, contrary to CEOC's stated intentions, instructed the Paying Agent to allocate the payment ratably between principal and interest due on December 15, the Convened DC has Resolved, by unanimous vote, that the Trustee's pro rata allocation did not result in a Failure to Pay Credit Event.

Indenture provides for a 30-day grace period for the failed interest payment, a Failure to Pay Credit Event could not have occurred on December 18, 2014 as a result of the failure to make the scheduled interest payment.

VI. DETERMINING THAT A FAILURE TO PAY HAS NOT OCCURRED WILL PROTECT THE INTEGRITY OF THE CDS PRODUCT AND THE MARKET

In addition to honoring the plain meaning of the Indenture, we respectfully submit that the Panel has an opportunity to recognize and protect the market's interest in an outcome that reflects and incorporates the economic reality of the underlying debt instruments referenced in the CDS product.[19] In this case, a principal payment was made and an interest payment (with a 30-day grace period) was not. A finding that a Failure to Pay Credit Event occurred by virtue of Section 4.01 (*Payment of Notes*) of the Indenture would not honor the terms of the Indenture and the Notes and would in addition distort the economic effect of the CDS as a hedging product. The CDS market is not a game of "gotcha" – it is an endeavor to allocate risks using the best tools available. Those tools need to be used and interpreted by the Panel in a way that respects their underlying purpose and common-sense intent.

VII. CONCLUSION

A Failure to Pay Credit Event did not occur on December 18, 2014. On December 15, 2014, the Issuer satisfied its obligations in respect of the Mandatory Principal Redemption required under the Notes, but not the scheduled interest payment on the Notes not subject to the redemption. The failed interest payment is subject to a 30-day grace period. The payment of the Redemption Price is governed by the requirements of Article III (*Redemption*) of the Indenture, and Publicly Available Information reasonably confirms that the Issuer complied with the requirements of Article III (*Redemption*). The payment required at a Mandatory Principal

[19] It is interesting to note that on January 12, 2015, certain holders of the Notes filed an involuntary bankruptcy petition against the Issuer based on the missed interest payment. Nowhere in that petition do those holders claim that the Issuer failed to make a principal payment under the Notes.

Redemption is not governed by the second sentence of Section 4.01 (*Payment of Notes*) of the Indenture because it is contingent and variable, and as such is not "an installment of principal or interest." Even if that sentence applied, it should be interpreted as establishing a sufficient condition, or method, for the Issuer to satisfy its obligations to pay principal and interest, and not an independent basis for payment default, much less an independent basis for a payment default that nullifies the 30-day grace period for interest payments.

This Panel should conclude that the "No" Position is the "better answer."