

EMEA DC Statement 6 June 2016

Reference is made to the DC statement published on 20 May 2016 (the **20 May DC Statement**)¹ summarising the DC's reasoning on two key issues that were discussed by the DC for the purposes of determining the Deliverable Obligations of Norske Skogindustrier ASA (the **Reference Entity**) to be included on the Initial List, namely (i) whether the Reference Entity's Guarantee in respect of the Guaranteed Bonds (as defined below) constitutes a Qualifying Guarantee, and (ii) whether the 2021s and the 2023s (each as defined below) satisfy the Not Subordinated Deliverable Obligation Characteristic.

Further to requests made by market participants, this statement provides further detail on the first of these two issues, specifically the DC's reasoning as to why the guarantee release circumstance described below would not impact the ability of the Reference Entity's Guarantee to be a Qualifying Guarantee for the purposes of 2014 Transactions.²

Definitions

For the purposes of this statement, and with reference to the Final List:

- (a) **2019s** means Deliverable Obligation Number 2;
- (b) **2021s** means Deliverable Obligation Number 3;
- (c) **2023s** means Deliverable Obligation Number 4; and
- (d) **Guaranteed Bonds** means the 2019s, the 2021s and the 2023s, being the Bonds guaranteed by, *inter alia*, the Reference Entity.

Capitalised Terms otherwise used but not defined in this statement have the meaning given to them in the 2016 Credit Derivatives Determinations Committees Rules (January 20, 2016 version)³ or the Listing Particulars for the Guaranteed Bonds (the **Listing Particulars**),⁴ as applicable.

Release of guarantees in accordance with enforcement action

As noted in the 20 May DC Statement, the Listing Particulars describe the circumstances in which the guarantees (including the Reference Entity's Guarantee) in respect of the Guaranteed Bonds may be released.⁵ These include release of the relevant guarantee(s) "*in accordance with enforcement action pursuant to the provisions of the Intercreditor Agreement or any Additional Intercreditor Agreement*".

The DC concluded that this guarantee release circumstance did not apply to the Reference Entity's Guarantee in respect of the Guaranteed Bonds for the following reasons:

Distressed Disposals

The Listing Particulars' summary description of the Intercreditor Agreement contains a section entitled "Distressed Disposals",⁶ which describes when a guarantee may be released in circumstances where assets of

¹ Available at <http://dc.isda.org/documents/2016/05/emea-dc-statement-20-may-2016-on-initial-list.pdf>

² The DC notes that the specific guarantee release circumstance described in this statement would equally and for the same reasons as set out herein not impact the ability of the Reference Entity's Guarantee to be a Qualifying Guarantee for the purposes of Updated 2003 Transactions. However, the DC has determined that the Reference Entity's Guarantee in respect of the Guaranteed Bonds does not constitute a Qualifying Guarantee for the purposes of Updated 2003 Transactions as a result of a separate guarantee release circumstance as described and discussed in the 20 May DC Statement. Therefore, the Qualifying Guarantee analysis under the Updated 2003 Definitions with respect to the guarantee release circumstance described in this statement is not expressly referred to herein.

³ Available at http://dc.isda.org/wp-content/files_mf/1453298092DC_Rules_Jan_2016_Update.pdf

⁴ Listing Particulars dated 14 July 2015, available at <http://www.norskeskog.com/Files/Filer/Inv%20Rel/Listing%20Particulars%20-%20Final%20July%202015.pdf>

⁵ See page 165 of the Listing Particulars in relation to the 2019s and page 225 in relation to the 2021s and 2023s.

a member of the "Group" are being disposed of. There are two circumstances in which the Security Agent may release a guarantee in connection with a Distressed Disposal:

- (a) if the share capital of a Debtor is being disposed of, that Debtor and any subsidiary thereof will be released from its guarantee liabilities; and
- (b) if the share capital of any holding company of a Debtor is being disposed of, that holding company and any subsidiary thereof will be released from its guarantee liabilities.

However, the wording used in the description of Distressed Disposals refers only to a disposal of the assets of a member of the Group. "Group" is defined to mean the Reference Entity and its Restricted Subsidiaries: assets of a member of such Group would not include the shares in the Reference Entity itself, since it is not the owner of such shares (its shareholders are), and so the disposal of the Reference Entity's shares, and accordingly the discharge of the Reference Entity's Guarantee, would not be possible under a Distressed Disposal. Further, the DC understood from the Listing Particulars that a Distressed Disposal would be the disposal of secured assets alone, and the Listing Particulars expressly state that the share capital of the Reference Entity (being the Parent entity) does not secure the 2019s.⁷ Accordingly, the DC concluded that it did not appear possible that shares in the Reference Entity could be the subject of a Distressed Disposal, and so this limb would not permit the Reference Entity's Guarantee to be released.

Non-Distressed Disposal

The Listing Particulars' summary description of the Intercreditor Agreement also contains a section entitled "Non-Distressed Disposals"⁸ which states that the guarantee of the Guaranteed Bonds may be released in certain circumstances. The DC was of the view that the Reference Entity's Guarantee should not be capable of being released pursuant to this Non-Distressed Disposals provision because the guarantee release circumstance described therein requires a *"transaction pursuant to which the Debtor or a holding company of the Debtor will cease to be a member of the Group or a Debtor"*. As noted above, "Group" means the Reference Entity and its Restricted Subsidiaries; accordingly it is impossible to sell the Reference Entity such that it ceases to be a member of the Group.

Accordingly, the DC concluded that neither of these guarantee release circumstances impacted the ability of the Reference Entity's Guarantee to be a Qualifying Guarantee for the purposes of 2014 Transactions.

⁶ See page 157 of the Listing Particulars.

⁷ Page 1 (seventh paragraph), Page 16 (see under heading "Security") and Page 40 (see under heading "Fraudulent conveyance laws and other limitations on the enforceability and the amount of the Guarantees and the Security Interests may adversely affect their validity and enforceability").

⁸ See page 156 of the Listing Particulars.