

Determinations Committee Decision

Date:	July 18, 2017
Determinations Committee:	Americas
Meeting Date:	July 18, 2017

DC Issue 2017071201:	Has a Failure to Pay Credit Event occurred with respect to Puerto Rico Electric Power Authority (PREPA)?	
Question for vote:	<i>Do you agree to publish the attached statement? (See Annex)?</i>	
Vote result:	Yes	
Votes:	15 'Yes' votes and 0 'No' votes	
	AllianceBernstein L.P.	Yes
	Bank of America N.A.	Yes
	Barclays Bank plc	Yes
	BNP Paribas	Yes
	Citadel LLC	Yes
	Citibank, N.A.	Yes
	Credit Suisse International	Yes
	Cyrus Capital Partners, L.P.	Yes
	Deutsche Bank AG	Yes
	Elliott Management Corporation	Yes
	Goldman Sachs International	Yes
	JPMorgan Chase Bank, N.A.	Yes
	Mizuho Securities Co., Ltd.	Yes
	Pacific Investment Management Co., LLC	Yes
	Société Générale	Yes

Annex

Americas DC Meeting Statement July 18, 2017

DC Issue Number 2017071201

Puerto Rico Electric Power Authority

Summary

On July 14, 2017, the Americas DC Resolved that a Failure to Pay Credit Event occurred on July 7, 2017 with respect to Muni Transactions (as defined below) that specify Puerto Rico Electric Power Authority (**PREPA**) as the Reference Entity and CUSIP 74526QKX9 as the Reference Obligation¹ (the **MCDX Reference Obligation**).

The Americas DC determined that the relevant Transaction Type relating to the DC Question is "Standard U.S. Municipal Revenue." Therefore, the DC Question relates to Updated 2003 Transactions² which specify the relevant Transaction Type and which incorporate the 2012 ISDA U.S. Municipal Reference Entity Supplement to the 2003 ISDA Credit Derivatives Definitions published by ISDA on March 5, 2012 (the **Muni Supplement**) (such transactions, **Muni Transactions**).

Each capitalized term used but not defined in this Meeting Statement has the meaning given to such term in the Muni Supplement or the Credit Derivatives Determinations Committees Rules (January 20, 2016 version) (including the Updated 2003 Definitions, as defined therein) (the **DC Rules**), as applicable.

Publicly Available Information

Based on the Publicly Available Information submitted in connection with the DC Question, the Americas DC Resolved that PREPA failed to make a payment that was due under the terms of the MCDX Reference Obligation on July 3, 2017.³

Failure to Pay

The definition of Failure to Pay for purposes of the Updated 2003 Definitions states as follows:

"Failure to Pay" means, 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 a 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.

In Resolving that a Failure to Pay occurred, the Americas DC reached the following conclusions:

¹ See discussion of the definition of "Obligation" below for additional detail on the relevant Obligation Category and Obligation Characteristics.

² In accordance with the DC Rules, "Updated 2003 Transaction" means a March 2009 Supplement Transaction or a July 2009 Supplement Transaction (and not a Credit Derivatives Transaction incorporating the 2014 Definitions as a result of the ISDA 2014 Credit Derivatives Definitions Protocol).

³ See the Notice from US Bank Global Corporate Trust Services to holders of Puerto Rico Electric Power Authority Power Revenue and Power Revenue Refunding Bonds dated July 3, 2017 (the **Trustee Notice**) (available online at: <https://emma.msrb.org/EP1010678-EP783544-EP1185263.pdf>) ("The purpose of this Notice is to inform you [...] of [...] the failure to pay principal and interest due on the Bonds on July 3, 2017").

(a) *"expiration of any applicable Grace Period..."*

The terms of the MCDX Reference Obligation contain no contractual grace period for payments of principal or interest.⁴ Therefore, the Americas DC applied a three Business Day grace period pursuant to the terms of Section 1.12(a)(iii) of the Updated 2003 Definitions. The Americas DC determined that there was no information indicating that the relevant payment failure was not continuing on the last day of the deemed three Business Day grace period, as adjusted by Greenwich Mean Time, and therefore the Failure to Pay occurred immediately prior to midnight on such day (July 7, 2017).

(b) *"payments in an aggregate amount of not less than the Payment Requirement..."*

Based on PREPA's filings with the Municipal Securities Rulemaking Board, the Americas DC determined that the relevant payment failure exceeded the Payment Requirement of USD 1,000,000.⁵

(c) *"under one or more Obligations"*

The Americas DC noted that for purposes of a Muni Transaction, an "Obligation" is defined to include "(a) any obligation of a Reference Entity [...] determined pursuant to the method described in Section 2.19 [of the Updated 2003 Definitions]", as well as "(b) each Reference Obligation, unless specified in the related Confirmation as an Excluded Obligation".⁶

With respect to clause (b) of the definition of "Obligation", if a Reference Obligation is specified, a failure to pay with respect to such Reference Obligation will constitute a Failure to Pay.

Alternatively, with respect to clause (a) of the definition of "Obligation", Section 2.19 of the Updated 2003 Definitions provides that an "Obligation" also includes an obligation that satisfies the relevant "Obligation Category" ("Borrowed Money") and that has each of the "Obligation Characteristics" specified in the related Confirmation ("Not Subordinated" and "Revenue Obligation Liability"). Because the "Revenue Obligation Liability" Obligation Characteristic requires assessment of a Reference Obligation⁷, clause (a) of the definition of "Obligation" will only be relevant if a Muni Transaction specifies a Reference Obligation.

As a result, the Americas DC could not make a general statement as to whether a Failure to Pay had occurred for all Muni Transactions specifying PREPA as the Reference Entity and instead limited its consideration of the Failure to Pay question to the MCDX Reference Obligation.

The Americas DC acknowledges that market participants with Muni Transactions that specify a different Reference Obligation may wish to submit a request that the Americas DC Resolve whether a Failure to Pay occurred with respect to their Muni Transaction; market participants interested in doing so should contact the DC Secretary with the CUSIP and offering documents for their Reference Obligation at dcsecretary@isda.org.

⁴ See the Supplement to the Official Statement of Puerto Rico Electric Power Authority dated April 19, 2007 (**Official Statement**) at p I-16 (available at: <https://emma.msrb.org/MS58324-MS261125-MD503781.pdf>).

⁵ See Trustee Notice and Official Statement.

⁶ See Section 2.14 of the Updated 2003 Definitions.

⁷ See Muni Supplement at Section II.9 (amending Section 2.19 of the Updated 2003 Definitions by defining a "Revenue Obligation Liability" as "[...] any liability of the Reference Entity that is payable, in whole or in part, from the same source of revenues as the Reference Obligation and that is not a Moral Obligation Liability").