

## EMEA DC Meeting Statement 2 August 2017

### 1. SUMMARY

The DC met on 2 August 2017 to continue its discussions as to whether a Failure to Pay Credit Event occurred in respect of Norske Skogindustrier ASA (the **Reference Entity**) as a result of the failure by the Reference Entity to make an interest payment of €17 million (the **SSNs Coupon**) in respect of the €290,000,000 11.75% senior secured notes due 2019 issued by Norske Skog AS and guaranteed by, among others, the Reference Entity (the **SSNs**).

The DC Resolved:

- (a) to treat the DC Question as separate requests in respect of (i) 2014 Transactions and (ii) Updated 2003 Transactions;
- (b) that a Failure to Pay Credit Event occurred on 15 July 2017 with respect to the Reference Entity in relation to 2014 Transactions only;
- (c) the Credit Event Resolution Request Date in relation to 2014 Transactions is 24 July 2017; and
- (d) that an Auction will be held in respect of 2014 Transactions.

The DC deferred determination of the DC Question in respect of Updated 2003 Transactions pending receipt of additional information as to whether the Reference Entity made payment of the 2026 Notes Coupon (as defined below) on or prior to 30 July 2017.

Capitalised terms used but not defined in this Meeting Statement have the meanings given to them in the Credit Derivatives Determinations Committees Rules (January 20, 2016 version) (including in the 2014 Definitions and the Updated 2003 Definitions, each as defined therein) (the **DC Rules**).

### 2. 2014 TRANSACTIONS

As part of its deliberations, the DC considered the following material issues:

#### 2.1 Publicly Available Information

The first issue the DC considered at its initial meeting on 25 July 2017 was whether the supporting information that accompanied the request to the DC Secretary on 24 July 2017 to convene the DC, namely a press release issued by the Reference Entity dated 14 July 2017 (the **14/7 Press Release**)<sup>1</sup>, constituted good Publicly Available Information.

Section 2.1(b) of the DC Rules states that the DC may not deliberate a Potential DC Issue relating to whether a Credit Event has occurred until the DC determines that Publicly Available Information (as defined in Section 1.35 of the 2014 Definitions) has been provided to the DC Secretary.

The DC agreed that as the 14/7 Press Release had been published by the Reference Entity itself, that alone was capable of constituting Publicly Available Information and, if so, it would not be necessary for the DC to be in possession of information from a second public source<sup>2</sup>.

---

<sup>1</sup> [See 14/7 Press Release](#)

<sup>2</sup> Section 1.35(a)(ii) of the 2014 Definitions

The 14/7 Press Release confirmed, *inter alia*, that (i) the Reference Entity failed to make payment of the SSNs Coupon on its originally scheduled due date of 15 June 2017, instead electing to utilise the 30-day contractual grace period contained in the indenture for the SSNs; (ii) this 30-day contractual grace period was due to expire on 15 July 2017; (iii) on 13 July 2017 the Reference Entity's board of directors had approved a further deferral of the SSNs Coupon past the end of the 30-day contractual grace period; and (iv) non-payment of the SSNs Coupon past the 30-day contractual grace period would constitute an event of default under the SSNs and a payment default under the Reference Entity's guarantee of the SSNs.

The issue the DC considered in further detail was whether it could rely on information published on 14 July 2017 to commence its deliberations on the Failure to Pay Credit Event question even though the non-payment by the Reference Entity that would be capable of triggering that Credit Event would only occur after the publication of such information (i.e. on 15 July 2017). The DC determined that the 14/7 Press Release contemplating, and therefore published prior to the occurrence of, a Failure to Pay Credit Event would constitute good Publicly Available Information for present purposes and could therefore be used by the DC to commence its deliberations on the Credit Event question itself.

In support of this conclusion, the DC noted that the definition of Publicly Available Information provides that (a) Publicly Available Information "is information that reasonably confirms *any of the facts relevant to the determination that the Credit Event...[has] occurred...*"<sup>3</sup> (emphasis added); and (b) Publicly Available Information "need not state...that the relevant occurrence...*is the result of exceeding any applicable Grace Period*"<sup>4</sup> (emphasis added). The definition of Publicly Available Information does not require that the relevant information confirms that the relevant Credit Event has actually occurred as at the date the information is published. Accordingly, the DC was of the view that the 14/7 Press Release was good Publicly Available Information because it was putting some of the existing facts (i.e. non-payment of the SSNs Coupon on 14 June 2017) as well as some of the prospective facts (i.e. non-payment would continue past the expiration of the grace period) which would be relevant to the determination of a Failure to Pay Credit Event into the public domain. Indeed, in light of the provision of the definition of Publicly Available Information noted at (b) above, the confirmation that the SSNs Coupon had been missed on 14 June 2017 would have been sufficient for the 14/7 Press Release to constitute good Publicly Available Information.

In further support of its conclusion, the DC drew a distinction between (i) the DC being in possession of Publicly Available Information (which is required for the purposes of the DC commencing its deliberations on a Credit Event question and determining the related Credit Event Resolution Request Date) and (ii) the DC being in possession of sufficient public information (or information that can be made public) to make a determination on the Credit Event question itself. The DC was of the view that the latter requires information to a significantly higher degree of certainty than the former.

## 2.2 Failure to Pay

Section 4.5 of the 2014 Definitions provides that a "Failure to Pay" Credit Event 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 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."

Taking the elements of this definition in turn:

- (a) "after the expiration of any applicable Grace Period"

The 14/7 Press Release and a subsequent press release issued by the Reference Entity dated 28 July 2017 (the **28/7 Press Release**, and together with the 14/7 Press Release, the **Press Releases**)<sup>5</sup> confirm

<sup>3</sup> Section 1.35(a) of the 2014 Definitions

<sup>4</sup> Section 1.35(c) of the 2014 Definitions

<sup>5</sup> [See 28/7 Press Release](#)

that a 30-day contractual grace period applied to the missed SSNs Coupon due on 15 June 2017. The DC determined that this 30-day grace period constitutes the Grace Period in accordance with Section 1.46(a) of the 2014 Definitions. Accordingly, the DC determined that the Grace Period expired on 15 July 2017 (as confirmed in each of the Press Releases).

Accordingly, the DC determined that the Grace Period expired on, and the relevant payment failure for purposes of Section 4.4 of the 2014 Definitions occurred, prior to midnight (Greenwich Mean Time)<sup>6</sup> on 15 July 2017.

- (b) *"failure by the Reference Entity to make, when and where due, any payments"*

The 28/7 Press Release confirmed that the Reference Entity did not pay the SSN Coupon on or prior to 15 July 2017 and that this non-payment constitutes an event of default under the SSNs and a payment default under the Reference Entity's guarantee of the SSNs.

- (c) *"in an aggregate amount of not less than the Payment Requirement"*

In accordance with Section 4.9(d) of the 2014 Definitions, the Payment Requirement is the euro equivalent of USD 1 million. The 14/7 Press Release confirmed that the amount of the SSNs Coupon is €17 million. The DC therefore determined that the failure to pay was in excess of the Payment Requirement.

- (d) *"under one or more Obligations, in accordance with the terms of such Obligations at the time of such failure"*

To constitute an Obligation, the SSNs must be borrowed money obligations of the issuer (Norske Skog AS) and the guarantee given by the Reference Entity in respect of the SSN must constitute a Qualifying Guarantee. The DC determined that the SSNs constituted borrowed money obligations of Norske Skog AS. For the purposes of determining whether the Reference Entity's guarantee of the SSNs constituted a Qualifying Guarantee, the DC referred back to the previous DC Credit Event Question in respect of the Reference Entity in May 2016 (Issue Number 2016041401). In the context of determining the Final List of Deliverable Obligations in relation to the Auction in respect of that DC Credit Event Question, the DC determined that the Reference Entity's guarantee of the SSNs did constitute a Qualifying Guarantee.<sup>7</sup>

The DC was not aware of any amendments having been made to such guarantee or the SSNs since it made this determination and therefore the DC determined that the Reference Entity's guarantee of the SSNs constitutes an "Obligation" for purposes of the 2014 Definitions for present purposes.

### 3. UPDATED 2003 TRANSACTIONS

The DC was of the view that the analysis set out above in respect of the 2014 Transactions would equally apply, *mutatis mutandis*, to the Failure to Pay Credit Event DC Question in respect of the Updated 2003 Transactions except in one key respect.

As is the case under the 2014 Definitions, to constitute a Failure to Pay Credit Event under the Updated 2003 Definitions, the non-payment must be in respect of *"one or more Obligations"*. Also as is the case under the 2014 Definitions, to constitute an Obligation for the purpose of the Updated 2003 Definitions, the SSNs must be borrowed money obligations of the issuer (Norske Skog AS) and the guarantee given by the Reference Entity in respect of the SSN must constitute a Qualifying Guarantee under the Updated 2003 Definitions. Again, on the Qualifying Guarantee question, the DC referred back to the previous DC Credit Event Question in respect of the Reference Entity (Issue Number 2016041401) where the DC had determined that the

<sup>6</sup> See Section 1.50 of the 2014 Definitions

<sup>7</sup> See [EMEA DC Statement of 20 May 2016](#) and [EMEA DC Statement of 6 June 2016](#)

Reference Entity's guarantee of the SSNs did **not** constitute a Qualifying Guarantee under the Updated 2003 Definitions.<sup>8</sup>

As noted above, the DC was not aware of any amendments having been made to the Reference Entity's guarantee of the SSNs since it made this decision and therefore the DC determined that the Reference Entity's guarantee of the SSNs did **not** constitute an "Obligation" for purposes of the Updated 2003 Definitions. The DC was therefore unable to call a Failure to Pay Credit Event in respect of Updated 2003 Transactions by reference to the missed SSN Coupon payment on 15 July 2017.

Notwithstanding this, the DC noted that the Press Releases (in particular, the 28/7 Press Release) also confirmed, *inter alia*, that (i) the Reference Entity failed to make an interest payment of €2 million (the **2026 Notes Coupon**) in respect of the €114,212,347 3.5% cash / 3.5% PIK senior notes due 2026 issued by the Reference Entity (the **2026 Notes**) on its originally scheduled due date of 30 June 2017, instead electing to utilise the 30-day contractual grace period under the 2026 Notes; (ii) this 30-day contractual grace period was due to expire on 30 July 2017; (iii) on 27 July 2017 the Reference Entity's board of directors resolved not to pay the 2026 Notes Coupon prior to the expiry of the grace period on 30 July 2017; and (iv) non-payment of the 2026 Notes Coupon past the 30-day contractual grace period would constitute an event of default under the 2026 Notes.

The DC noted that the Qualifying Guarantee issue under the Updated 2003 Definitions would not be an issue in respect of the 2026 Notes as these notes are directly issued by the Reference Entity. Accordingly, the DC deferred the determination of the DC Question in respect of Updated 2003 Transactions pending receipt of additional information as to whether the Reference Entity made payment of the 2026 Notes Coupon on or prior to 30 July 2017.

---

<sup>8</sup> See [EMEA DC Statement of 20 May 2016](#)