

EMEA DC Meeting Statement 16 August 2017

1. SUMMARY

The DC met today, 16 August 2017, to resume discussions as to whether a Failure to Pay Credit Event occurred with respect to Norske Skogindustrier ASA (the **Reference Entity**) solely in relation to Updated 2003 Transactions as a result of the failure by the Reference Entity to make an interest payment of €2 million (the **2026s Coupon**) in respect of the €114,212,347 3.5% cash / 3.5% PIK senior notes due 2026 issued by the Reference Entity (the **2026s**).

The DC Resolved:

- (a) that a Failure to Pay Credit Event occurred on 30 July 2017 with respect to the Reference Entity in relation to Updated 2003 Transactions only; and
- (b) notwithstanding the DC Resolution of 25 July 2017,¹ the Credit Event Resolution Request Date in relation to Updated 2003 Transactions only is 31 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. FAILURE TO PAY

Section 4.5 of the Updated 2003 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 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.*"

Taking the elements of this definition in turn:

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

The Press Releases issued by the Reference Entity dated 14 July 2017 (the **14/7 Press Release**)², 28 July 2017 (the **28/7 Press Release**)³ and 11 August 2017 (the **11/8 Press Release**)⁴ and together with the 14/7 Press Release and 28/7 Press Release, the **Press Releases**) confirm that a 30-day contractual grace period applied to the missed 2026s Coupon due on 30 June 2017. The DC determined that this 30-day grace period constitutes the Grace Period in accordance with Section 1.12(a) of the Updated 2003 Definitions.

In light of the above and the fact that the Reference Entity is a Norwegian company, the DC determined that the Grace Period expired on 30 July 2017 (as confirmed in each of the Press Releases) at midnight Oslo time. As midnight Oslo time would have been 10:00 p.m. GMT due to daylight saving time, the DC determined that the payment failure for purposes of Section 4.4 of the Updated 2003 Definitions occurred on 30 July 2017.

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

¹ [See DC Resolution 25/7/17](#)

² [See 14/7 Press Release](#)

³ [See 28/7 Press Release](#)

⁴ [See 11/8 Press Release](#)

The 11/8 Press Release confirmed that the Reference Entity did not pay the 2026s Coupon on or prior to 30 July 2017 and the 28/7 Press Release confirms that non-payment beyond the end of the 30-day grace period would constitute an event of default under the 2026s.

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

In accordance with Section 4.8(d) of the Updated 2003 Definitions, the Payment Requirement is the euro equivalent of USD 1 million. The short form of the 28/7 Press Release confirmed that the amount of the 2026s Coupon is €2 million.⁵ 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"*

The DC determined that the 2026s constituted Borrowed Money obligations of the Reference Entity and therefore constitute "Obligations" for purposes of the Updated 2003 Definitions for present purposes.

3. PUBLICLY AVAILABLE INFORMATION

As for the Failure to Pay Credit Event DC Question in respect of 2014 Transactions, one of the issues considered by the DC was whether the information it sought to rely on to commence its deliberations with respect to the DC Question in respect of Updated 2003 Transactions (i.e. the 14/7 Press Release and the 28/7 Press Release) was good Publicly Available Information. Specifically, whether it could rely on information published on 14 July 2017 and 28 July 2017 to commence its deliberations even though the non-payment by the Reference Entity that would be capable of triggering the Credit Event in respect of Updated 2003 Transactions would only occur after the publication of such information (i.e. on 30 July 2017).

The DC was of the view that the 14/7 Press Release and the 28/7 Press Release were good Publicly Available Information because they were putting some of the existing facts (i.e. non-payment of the 2026s Coupon on 30 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 in respect of Updated 2003 Transactions into the public domain. For similar reasons to those set out in the previous DC Statement on the same point but in respect of 2014 Transactions⁶, this view aligns with the definition of Publicly Available Information at Section 3.5 of the Updated 2003 Definitions.

4. CREDIT EVENT RESOLUTION REQUEST DATE

The term "Credit Event Resolution Request Date" means *"with respect to a notice to ISDA, delivered in accordance with the [DC Rules], requesting that a Credit Derivatives Determinations Committee be convened to Resolve: (a) whether an event that constitutes a Credit Event for purposes of the relevant [Updated 2003 Transaction] **has occurred** [and, (b) if so, the date such Credit Event occurred], the date, as publicly announced by ISDA that the relevant Credit Derivatives Determinations Committee Resolves to be the first date on which such notice was **effective** and on which the relevant Credit Derivatives Determinations Committee was in possession, in accordance with the DC Rules, of Publicly Available Information with respect to [the DC Resolutions referred to in (a) and (b) above]"* (emphasis added).⁷

The DC was of the view that such a notice to ISDA must relate to an event that "has occurred" in order for such notice to be "effective" for purposes of the "Credit Event Resolution Request Date" definition. For

⁵ [See short form of 28/7 Press Release.](#)

⁶ [See DC Statement of 2 August 2017](#)

⁷ Section 1.24 of the Updated 2003 Definitions.

information, this interpretation is consistent with that taken by the Americas DC in the decision on whether a Failure to Pay Credit Event had occurred with respect to iHeart Communications, Inc.⁸

The DC further determined that the earliest date on which the Failure to Pay could have occurred with respect to the Updated 2003 Transactions was 30 July 2017 (as noted above). Given that the payment failure occurred on 30 July 2017 at midnight Oslo time, the earliest time that a notice to ISDA to convene the DC to determine whether a Failure to Pay Credit Event in respect of Updated 2003 Transactions could have been effective was 31 July 2017 (taking into account the effectiveness of notices provision at Section 3.1(a) of the DC Rules⁹).

As a result, and notwithstanding (i) the DC Resolution of 25 July 2017¹⁰ and (ii) that the DC was in possession of Publicly Available Information before 30 July 2017 (i.e. the date the Failure to Pay Credit Event occurred) as explained in paragraph 3 above, the DC Resolved that the Credit Event Resolution Request Date was 31 July 2017 for Updated 2003 Transactions.

The DC noted that, in principle, it cannot commence its deliberations on a Credit Event question until both (a) an effective notice has been sent to ISDA requesting the DC convenes (see above) and (b) the DC determines that Publicly Available Information has been provided to the DC Secretary. Notwithstanding the foregoing, the DC was of the view that as a matter of convenience it may on a case-by-case basis commence preliminary discussions based on Publicly Available Information (as it did in respect of the current Failure to Pay Credit Event question with respect to Updated 2003 Transactions) in relation to a matter for which a notice to ISDA to convene the relevant DC is not yet effective (for example, because the Credit Event has not yet occurred). For example, the DC engaged in preliminary discussions in the context of the Hellenic Republic Restructuring Credit Event question following multiple submissions from the market.

5. AUCTION

The DC noted that based on the previous DC Question relating to the Reference Entity¹¹, the Deliverable Obligations that apply in respect of Updated 2003 Transactions are not the same as the Deliverable Obligations that apply in respect of 2014 Transactions, and so an Auction for Updated 2003 Transactions cannot be combined with the Auction for 2014 Transactions. As such, the DC is currently considering whether to hold a separate Auction with respect to Updated 2003 Transactions and expects to make a determination on this issue in the next few days.

⁸ [See Americas DC Statement of 21 December 2016](#)

⁹ See also Section 1.1(d) of the DC Rules which provides that the DC shall apply the provisions of the DC Rules to the relevant provisions of the Updated 2003 Definitions on a *mutatis mutandis* basis.

¹⁰ [See DC Resolution 25/7/17](#)

¹¹ [See Credit Event webpage for DC Issue 2016041401](#)