

**Americas DC Meeting Statement October 5, 2017**

**DC Issue Number 2017091901**

**Toys "R" Us, Inc.**

**Summary**

On October 4, 2017, the Americas DC received a request from an Eligible Market Participant, submitted pursuant to Section 3.3(d) of the DC Rules, challenging the inclusion of the following obligations (the **Pass-Through Certificates**) on the Supplemental List for Toys "R" Us, Inc. (the **Reference Entity**):

Commercial Mortgage Pass-Through Certificates, Series 2016-TOYS (also referred to as TRU Trust 2016-TOYS)		
<b>CUSIP</b>	<b>Coupon</b>	<b>Maturity</b>
87266TAA0	3.484	11/15/30
87266TAC6	4.384	11/15/30
87266TAE2	5.234	11/15/30
87266TAG7	7.484	11/15/30
87266TAJ1	9.984	11/15/30
87266TAL6	13.234	11/15/30

For the reasons discussed below, the Americas DC Resolved that the Pass-Through Certificates are not Deliverable Obligations of the Reference Entity and therefore the Pass-Through Certificates will not be included on the Final List for the Reference Entity.

Each capitalized term used but not defined in this Meeting Statement has the meaning given to such term in the Credit Derivatives Determinations Committees Rules (January 20, 2016 version) (including the 2014 Definitions and Updated 2003 Definitions, as applicable, as defined therein) (the **DC Rules**).

**Background**

By way of background, on November 3, 2016, Toys "R" Us Property Company II, LLC (the **Borrower**), an indirect wholly-owned subsidiary of the Reference Entity<sup>1</sup> entered into a \$512 million mortgage loan agreement (the **Loan Agreement** and the loan issued thereunder, the **Loan**) with Goldman Sachs Mortgage Company and Bank of America N.A. (together, the **Original Lenders**). On the same date, the Reference Entity entered into a guaranty (the **Guaranty**), pursuant to which the Reference Entity guarantees in favor of the Original Lenders all principal and interest due from the Borrower under the Loan Agreement. The Original Lenders subsequently assigned the

<sup>1</sup> Page 2 of the Form 8-K dated November 3, 2016: <https://www.sec.gov/Archives/edgar/data/1005414/000119312516759458/d285163d8k.htm>

Loan in full to TRU Trust 2016-TOYS (the **Issuer**), a special purpose vehicle which issued the Pass-Through Certificates in connection with such assignment.

### **Deliverable Obligation**

As a threshold matter, the Americas DC noted that a "Deliverable Obligation" is defined in pertinent part to include "any **obligation of the Reference Entity (either directly or as provider of a Relevant Guarantee)** determined pursuant to the method described in Section 3.14 of the 2014 Definitions" (emphasis added).<sup>2</sup>

The Americas DC therefore focused on the question of whether the Pass-Through Certificates constitute obligations of the Reference Entity, whether directly or as a provider of a Relevant Guarantee.

The Americas DC determined that the information submitted in connection with the Pass-Through Certificates does not indicate that the Reference Entity has issued a guarantee for the benefit of the holders of the Pass-Through Certificates, or that the Pass-Through Certificates themselves constitute obligations of the Reference Entity.

In addition, the Americas DC noted the following:

- (a) the Form 8-K dated November 3, 2016 in respect of the Reference Entity (the **Form 8-K**) expressly states that the Pass-Through Certificates are "not securities issued by, or obligations of the Reference Entity or any of the Reference Entity's affiliates"<sup>3</sup>; and
- (b) the Form 8-K refers to the Issuer as being the sole "lender of record" in respect of the Loan.

Finally, the Americas DC noted that the First Day Declarations filed in connection with the Reference Entity's Chapter 11 proceeding before the United States Bankruptcy Court for the Eastern District of Virginia dated September 19, 2017<sup>4</sup> include a description of the outstanding debt obligations of the Reference Entity. While the First Day Declaration specifically describes the Loan and Guaranty as obligations of the Reference Entity, it does not describe the Pass-Through Certificates or any amounts which may fall due to the holders of the Pass-Through Certificates as debt obligations of the Reference Entity.

On the basis of the above, the Americas DC determined that the Pass-Through Certificates do not constitute "obligations of the Reference Entity", whether directly or as a provider of a Relevant Guarantee, and Resolved that the Pass-Through Certificates should not be included on the Final List of Deliverable Obligations.

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<sup>2</sup> With respect to the quoted text, the definition of "Deliverable Obligation" in the Updated 2003 Definitions is similar in substance to that in the 2014 Definitions.

<sup>3</sup> Page 3 of the Form 8-K.

<sup>4</sup> Declaration of David A. Brandon, Chairman of the Board and Chief Executive Officer of Toys "R" Us, Inc., In Support of Chapter 11 Petitions and First Day Motions. <https://cases.primeclerk.com/toysrus/Home-DocketInfo?DocAttribute=3462&DocAttrName=FirstDayMotions>