

To: North American Credit Derivatives Determinations Committee (the “**DC**”)

Date: February 26, 2019

Re: Issue Number 2017121501 with respect to the DC Credit Event Question related to Failure to Pay in respect of Windstream Services, LLC (“**Windstream**”)

Should the DC reverse its determination in issue number 2017121501 that a Failure to Pay Credit Event did not occur with respect to Windstream Services LLC and instead hold that a Failure to Pay Credit Event has occurred with both a Credit Event Resolution Request Date and Event Determination Date of December 15, 2017, the first date on which the DC Credit Event Question was effective and the DC was in possession of Publicly Available Information?

A resolution of this question in the affirmative is critically important despite the recent determination that a Bankruptcy Credit Event has occurred. Failure to address this request would leave CDS protection buyers with expired CDS contracts unduly harmed even though Windstream failed to make a payment in excess of \$300 million prior to the expiration of those contracts.

Background

Reference is made to DC Credit Event Question issue number 2017121501 submitted to the DC on December 15, 2017 (the “**Initial Request**”) asking the DC to consider whether a Failure to Pay Credit Event occurred in respect of Windstream based on Windstream’s failure to repay the amounts outstanding under its 6.375% Senior Notes due 2023 (the “**Notes**”) following delivery of an acceleration notice dated December 7, 2017 (the “**Acceleration Notice**”). Since October 2017, Windstream has disputed the validity and effectiveness of the Acceleration Notice (the “**Dispute**”) in the U.S. District Court for the Southern District of New York (the “**Court**”).

On December 21, 2017, the DC determined (the “**Initial Determination**”) that, “on the basis of information available”, a Failure to Pay Credit Event had not occurred.

Since then the Court has ruled on the Dispute, and in a decision dated February 15, 2019 (the “**Decision**”), held that:

“the December 7, 2017 Notice of Acceleration sent by Aurelius to Services with respect to those Events of Default was valid and effective, and all principal together with all accrued and unpaid interest on the Notes became immediately due and payable as of that date” (emphasis added).

The Decision confirms that Windstream was required to repay the full outstanding principal amount of the Notes as of December 7, 2017. Windstream did not repay such amount by December 12, 2017, the expiration of the three-Business Day Grace Period provided in Section 1.46 of the ISDA’s 2014 Credit Derivatives Definitions (the “**Definitions**”). As a result, a Failure to Pay Credit Event occurred starting on December 13, 2017 and, the DC should therefore reverse its Initial Determination with respect to the Initial Request (as permitted under

Section 2.5(b) of the DC Rules and Section 10.2 of the Definitions) and make a corresponding Credit Event determination (the “**Reversal**”).

Credit Event Resolution Request Date and Event Determination Date

In connection with the Reversal, the DC should also consider the appropriate Credit Event Resolution Request Date under Section 1.30 of the Definitions. In order to determine the Credit Event Resolution Request Date, it is necessary to ascertain (i) the date on which the DC Credit Event Question (i.e. the Initial Request) was effective, and (ii) the date on which the DC was in possession of Publicly Available Information with respect to such Initial Request.

DC Credit Event Question Effective Date

The date on which DC Credit Event Question was effective is the date on which the question was submitted to the DC. The Initial Request was submitted on December 15, 2017 and was therefore effective on that date.

Publicly Available Information

While the DC cannot be expected to find that a Credit Event has occurred any time a creditor accelerates debt where the Reference Entity disputes the acceleration, the DC should revisit an earlier decision once a court has confirmed the validity of the acceleration. Failure to do this would frustrate market participants’ reasonable expectations of how the CDS contract is intended to function.

In light of the Decision, it is now apparent that the Acceleration Notice and all other information submitted in connection with the Initial Request on December 15, 2017 constituted Publicly Available Information sufficient to determine that the principal together with all accrued and unpaid interest on the Notes became due and payable upon delivery of the Acceleration Notice. Despite its statement in connection with the Initial Determination, the DC was in possession of all relevant facts and information at that time and should have made a determination on that basis. The Decision merely eliminates any doubt that the Notes were accelerated on the date of the Acceleration Notice and, therefore, constitutes “new information not previously known to the Convened DC” pursuant to Section 2.5(b) of the DC Rules, justifying a reversal of the Initial Determination.

The DC should now rectify its determination and hold that a Failure to Pay Credit Event occurred on December 13, 2017. The Reversal should specify that both the related Credit Event Resolution Request Date and Event Determination Date occurred on December 15, 2017. This outcome is the only fair outcome for market participants whose reasonable expectations of credit protection have been frustrated while a Reference Entity has failed to make a payment in excess of \$300 million for over fourteen months. The DC should now act to correct its course and acknowledge those facts that were clear but not given effect to on December 15, 2017.

We confirm that a copy of this statement may be provided to the members of any Credit Derivatives Determinations Committee convened under the DC Rules in connection with the

General Interest Question to consider the issues discussed herein, and that it may be made publicly available on the ISDA Credit Derivatives Determinations Committee website. We accept no responsibility or legal liability in relation to its contents.