

EMEA DC Meeting Statement 22 March 2019

1. SUMMARY

The DC met on 22 March 2019 to discuss whether a Failure to Pay Credit Event has occurred with respect to Steinhoff Europe AG (the **Reference Entity**) as a result of the failure by the Reference Entity to make an interest payment in respect of the €800,000,000 1.875% Notes due 2025 issued by the Reference Entity (the **Notes**)¹.

The DC resolved:

- (a) that a Failure to Pay Credit Event occurred on 8 February 2019 with respect to the Reference Entity in relation to 2014 Transactions; and
- (b) the Credit Event Resolution Request Date is 20 March 2019.

The Coverage Election in respect of this DC Question was 2014 Transactions only, and so no determinations were made in respect of Updated 2003 Transactions.

The DC resolved to meet again to discuss next steps in relation to settlement on Friday 29 March 2019.

Capitalised terms used but not defined in this Meeting Statement have the meanings given to them in the Credit Derivatives Determinations Committees Rules (September 28, 2018 version) (including in the 2014 Definitions, as defined therein) (the **DC Rules**).

2. PUBLICLY AVAILABLE INFORMATION

The Publicly Available Information submitted in support of the DC Question was a redacted notice from Euroclear to a holder of the Notes.

This DC determined that this constituted Publicly Available Information because it confirmed facts relevant to the determination of the Credit Event, had been received from a clearing agent and had been confirmed to the DC Secretary as being capable of being made public without violating any law, agreement, understanding or other restriction regarding the confidentiality of such information.²

The notice stated that, in respect of the Notes' interest period from 24 January 2018 to 24 January 2019, the interest payment was "deferred until further notice" because the Reference Entity had "filed for lockup period under the Insolvency Act". Consistent with the Notes' prospectus, it further stated that the grace period described in the terms and conditions of the Notes was 15 calendar days. The grace period therefore expired on 8 February 2019.

3. LOCKUP PERIOD

While it was clear from the Publicly Available Information that the Notes' coupon payment had not been made, the DC noted the reference in the Publicly Available Information to "deferral" of the payment. The DC therefore discussed the basis on which this non-payment had occurred.

The Publicly Available Information stated that the payment had been deferred on the basis of a "lockup period under the Insolvency Act". This was in reference to the Company Voluntary Arrangement (**CVA**) which the Reference Entity had proposed under the UK Insolvency Act 1986³. The Reference Entity had also entered into a separate lock-up agreement with a significant portion of its creditors, which predated its

¹ Notes prospectus available at <http://www.steinhoffinternational.com/downloads/2017/Prospectus.pdf>

² 2014 Definitions, Section 1.35

³ CVA proposal available at <https://www.lucid-is.com/steinhoff/>

CVA proposal (the **Lock-up Agreement**)⁴. Each of these was proposed/entered into in order to facilitate a restructuring of the Reference Entity's debt, as set out in its CVA proposal.

The DC considered the terms of the CVA (certain provisions of which were in effect as of 14 December 2018, being the date it was approved at the Reference Entity's creditor meeting) and the Lock-up Agreement. In each case, while these contained agreements that the Reference Entity group would not make payments on its debt and creditors would not enforce, it was clear that these did not change the date on which the Reference Entity's payments under the Notes were due and payable. The coupon payment was therefore not "deferred" in a legal sense, but had rather not been made.

4. FAILURE TO PAY DETERMINATION

The coupon payment in respect of the Notes therefore remained due and payable in accordance with the terms and conditions of the Notes (and the DC noted that, even had the Lock-up Agreement and or CVA legally extended the grace period, the Grace Period for the purposes of determining a Failure to Pay Credit Event was to be determined on the basis of the terms of the relevant Obligation as at the date it was issued or incurred). By the terms of the Notes, the payment date was 24 January 2019, and the Grace Period in respect thereof expired 15 calendar days thereafter, on 8 February 2019.

The DC determined that the Notes constituted an Obligation of the Reference Entity and inferred that the Payment Requirement had been met based on the quantum of the Notes, their coupon amount and the length of the relevant interest period.

Accordingly, the DC determined that a Failure to Pay Credit Event had occurred in respect of the Reference Entity on the day the Grace Period expired,⁵ on 8 February 2019.

⁴ Lock-up Agreement available at <https://www.lucid-is.com/steinhoff/>

⁵ See 2014 Definitions, Section 1.50