

Americas Credit Derivatives Determinations Committee Statement – January 21, 2020

Owens-Illinois, Inc. Successor Determination

DC Issue Number 2020010201

In considering DC Issue Number 2020010201 relating to Owens-Illinois, Inc. (**OI**), the members of the Americas Credit Derivatives Determinations Committee (the **DC**) took note of the following considerations (each member of the DC may not have relied on all of the considerations contained in this Statement, and one, or any combination, of such considerations may have been sufficient for a member of the DC to reach its individual conclusion).¹

1. SUMMARY OF EVENTS

- (a) On December 26, 2019, OI, O-I Glass, Inc. and Paddock Enterprises, LLC (**Paddock**) entered into an Agreement and Plan of Merger (the **Merger Agreement**).² As disclosed in filings with the State of Delaware, the merger became effective at 10:00 am EST on December 26, 2019 (the **Merger Effective Date**). Pursuant to the terms of the Merger Agreement, OI merged with and into Paddock, with Paddock continuing as the surviving entity.³ The Merger Agreement further provided that "[a]t the effective time of the merger, the separate existence of [OI] shall cease [...]".⁴
- (b) OI's investor relations team has confirmed that as of or immediately prior to the Merger Effective Date, OI had no outstanding debt (whether directly or as provider of a guarantee).

2. DETERMINATION OF THE "RELEVANT OBLIGATIONS" OF OWENS-ILLINOIS, INC.

- (a) Under the 2014 Definitions, an entity "succeeds" to a Reference Entity and its Relevant Obligations when it "(i) assumes or becomes liable for such Relevant Obligations whether by operation of law or pursuant to any agreement [...] or (ii) issues Bonds or incurs Loans (the "Exchange Bonds or Loans") that are exchanged for Relevant Obligations, and in either case the Reference Entity is not thereafter a direct obligor or a provider of a Relevant Guarantee with respect to such Relevant Obligations or such Exchange Bonds or Loans, as applicable".⁵

¹ Each capitalized term used but not defined herein has the meaning specified in (a) the 2014 ISDA Credit Derivatives Definitions (the **2014 Definitions**), as published by the International Swaps and Derivatives Association, Inc. (**ISDA**), or (b) the 2003 ISDA Credit Derivatives Definitions as supplemented by either (i) the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement Supplement to the 2003 ISDA Credit Derivatives Definitions published on March 12, 2009 or (ii) the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions published on July 14, 2009, in each case as published by ISDA (the **Updated 2003 Definitions**), as applicable.

² https://www.sec.gov/Archives/edgar/data/812074/000110465919076288/tm1926776d1_ex2-1.htm.

³ https://www.sec.gov/Archives/edgar/data/812074/000110465919076288/tm1926776d1_ex2-1.htm

⁴ *Id.* at Section 2.

⁵ Section 2.2(d) of the 2014 Definitions.

- (b) "Relevant Obligations" are defined to mean "the Obligations of the Reference Entity which fall within the Obligation Category "Bond or Loan" and which are outstanding immediately prior to the Succession Date".⁶ The term "Obligation" may include "obligations of the Reference Entity (either directly or as provider of a Relevant Guarantee)".⁷
- (c) As noted above, OI had no debt (whether directly or as provider of a guarantee), and therefore no Relevant Obligations existed, as of or immediately prior to the Merger Effective Date (i.e., the date the separate existence of OI ceased).

3. DETERMINATION OF A "SUCCESSOR" UNDER THE 2014 DEFINITIONS

- (a) Under the 2014 Definitions, an entity may be determined to be the "Successor" of the Reference Entity if such entity succeeds to all or a portion of the "Relevant Obligations" of the Reference Entity, as described in Section 2.2 of the 2014 Definitions.⁸ In particular, Section 2.2(a)(vii) of the 2014 Definitions provides that:

if one entity assumes all of the obligations (*including at least one Relevant Obligation*) of the Reference Entity, and at the time of the determination either (A) the Reference Entity has ceased to exist, or (B) the Reference Entity is in the process of being dissolved (howsoever described) and the Reference Entity has not issued or incurred any Borrowed Money obligation at any time since the legally effective date of the assumption, such entity (the "Universal Successor") will be the sole Successor for the entire Credit Derivative Transaction [emphasis added].

- (b) Paddock is the sole surviving entity of the merger. However, because no Relevant Obligations existed as of or immediately prior to the Merger Effective Date, no Universal Successor (or other form of Successor) can be determined under the 2014 Definitions.

4. DETERMINATION OF A "SUCCESSOR" UNDER THE UPDATED 2003 DEFINITIONS

As with the 2014 Definitions, the Updated 2003 Definitions provide that a "Successor" may only be determined if another entity succeeds to the Reference Entity's "Relevant Obligations".⁹ As a result, no Successor can be determined under the Updated 2003 Definitions.

5. EFFECT ON EXISTING CREDIT DERIVATIVE TRANSACTIONS

Because OI has ceased to exist and no Successor has been determined, existing Credit Derivative Transactions subject to either the 2014 Definitions or the Updated 2003 Definitions specifying OI as the Reference Entity will continue pursuant to their terms and will not be considered frustrated, or otherwise void or voidable (whether for mistake or otherwise) solely because the Reference Entity does not exist on, or ceases to exist on or following, the Trade Date.

⁶ Section 2.2(f) of the 2014 Definitions. Cf. Section 2.2(f) of the Updated 2003 Definitions.

⁷ Section 3.1(a) of the 2014 Definitions. Cf. Section 2.14 of the Updated 2003 Definitions.

⁸ See Section 2.2(c)(ii) of the 2014 Definitions ("An entity may only be a Successor if [...] the Reference Entity had at least one Relevant Obligation outstanding immediately prior to the Succession Date and such entity succeeds to all or a part of at least one Relevant Obligation of the Reference Entity [...]").; see generally Section 2.2(a) of the 2014 Definitions (each limb of which refers to an entity assuming all or a portion of the Reference Entity's "Relevant Obligations").

⁹ See Section 2.2(a) of the Updated 2003 Definitions.