

Americas Credit Derivatives Determinations Committee Statement – March 31, 2020

AK Steel Corporation Successor Determination

DC Issue Number 2020031301

The Americas DC considered the General Interest Question relating to AK Steel Corporation (**AKS**) (DC Issue Number 2020031301) under the 2014 ISDA Credit Derivatives Definitions (the **2014 Definitions**) as published by the International Swaps and Derivatives Association, Inc., and Resolved on March 31, 2020 that, as a result of an exchange offer involving Cleveland-Cliffs Inc. (**CLF**), each of AKS and CLF became a Successor to AKS under the 2014 Definitions¹ on March 16, 2020.

The Americas DC is providing the following statement in connection with its Successor determination.

1. SUMMARY OF EVENTS

- (a) On December 2, 2019, CLF, AK Steel Holding Corporation (**AK Holding**), and Pepper Merger Sub Inc., a wholly-owned subsidiary of CLF (**Merger Sub**) entered into a merger agreement (the **Merger Agreement**) pursuant to which AK Holding would become a wholly-owned subsidiary of CLF via a reverse-triangle merger with Merger Sub (the **Merger**).² Sections 5.2(m)(i) and 6.16(a) of the Merger Agreement required CLF to have sufficient funds to complete the Merger and to use reasonable best efforts to obtain financing to "refinance in full all amounts outstanding" under the AKS ABL (defined below) and the AKS 2023 Secured Notes (defined below).³
- (b) On January 14, 2020, CLF announced the commencement of offers to tender and exchange any and all validly tendered outstanding (i) 6.375% Senior Notes due 2025 issued by AKS (the **AKS 2025 Exchange Notes**) for up to an equal aggregate principal amount of new 6.375% Senior Notes due 2025 issued by CLF (the **New CLF 2025 Notes**), and (ii) 7.00% Senior Notes due 2027 issued by AKS (the **AKS 2027 Exchange Notes**, and with the AKS 2025 Exchange Notes, collectively, the **AKS Exchange Notes**) for up to an equal aggregate principal amount of new 7.00% Senior Notes due 2027 issued by CLF (the **New CLF 2027 Notes**, and with the New CLF 2025 Notes, collectively, the **New CLF Notes**) (the **Exchange Offers**).⁴ The Exchange Offers were made contingent on the consummation of the Merger.⁵
- (c) On February 11, 2020, the early results of the Exchange Offers were announced.⁶ CLF and AK Holding also announced that they anticipated an earlier-than-expected consummation of the Merger on March 13, 2020 and that they were extending the expiration date of the Exchange Offers to March 13, 2020 (the **Expiration Date**) to coincide with the anticipated date of the consummation of the Merger.⁷

¹ Each capitalized term used but not defined in this Statement shall have the meaning given to it in (a) the DC Rules or (b) the 2014 Definitions, as applicable.

² See the Merger Agreement (Dec. 2, 2019): <https://www.sec.gov/Archives/edgar/data/918160/000119312519305772/d843522dex21.htm>.

³ Id. (note, however, that the Commitment Letters entered into by CLF to ensure the referenced financing are not publicly available).

⁴ See the following news release in connection with the announcement of the Exchange Offers (dated January 14, 2020): <https://www.sec.gov/Archives/edgar/data/764065/000076406520000014/a20200114-exchangeoffersla.htm>

⁵ See CLF Offering Memorandum and Consent Solicitation Statement dated January 14, 2020 (**Exchange Offer OM**) at iii (CLF's obligations to accept the Exchange Offer and issue the new CLF notes "is subject to . . . the consummation of the proposed [Merger] . . ."). The Exchange Offer OM was made available by Global Bondholder Services Corporation at the time of the Exchange Offer.

⁶ See the following news release in connection with the early results of the Exchange Offers (dated February 11, 2020): <https://www.businesswire.com/news/home/20200211006089/en/Cleveland-Cliffs-AK-Steel-Holding-Corporation-Announce-Extension>.

⁷ See Id.

- (d) On February 26, 2020, CLF announced the commencement of tender offers to purchase for cash any and all outstanding (i) 7.625% Senior Notes due 2021 issued by AKS (**AKS 2021 Notes**), and (ii) 7.50% Senior Secured Notes due 2023 issued by AKS (**AKS 2023 Secured Notes**), and together with the AKS 2021 Notes, the **AKS Tender Notes** (the **Tender Offers**).⁸ The Tender Offers were made contingent on the consummation of the Merger.⁹
- (e) On March 13, 2020:
- (i) the Merger became effective.¹⁰
 - (ii) the Exchange Offer exchange period expired.¹¹
 - (iii) CLF accepted for payment and settled the Tender Offers with respect to \$364.2 million aggregate principal amount of AKS 2021 Notes and \$310.7 million aggregate principal amount of AKS 2023 Secured Notes which were validly tendered and not withdrawn prior to the March 10, 2020 early participation deadline; after such payment and settlement, \$69.342 million in AKS 2023 Secured Notes, and \$42 million in AKS 2021 Notes remained outstanding notes of AKS.¹²
 - (iv) All amounts outstanding¹³ under the Second Amended and Restated Loan and Security Agreement, dated as of September 13, 2017, by and among AKS, as borrower, the borrowing base guarantors from time to time party thereto, certain financial institutions from time to time party thereto as lenders, and Bank of America, N.A. as administrative agent for the lenders (as amended by that certain First Amendment to Second Amended and Restated Loan and Security Agreement, dated as of April 26, 2019, the **AKS ABL**) were repaid in full, and the AKS ABL was terminated.¹⁴
 - (v) CLF entered into an asset-based revolving credit facility with Bank of America, N.A. as administrative agent and a lender, and various other financial institutions as lenders (the **New CLF ABL**).¹⁵ The New CLF ABL will mature upon the earlier of March 13, 2025 or 91 days prior to the maturity of certain other material debt of CLF, and "provides for up to \$2.0 billion in borrowings, including a \$555.0 million sublimit for the issuance of letters of credit and a \$125.0 million sublimit for swingline loans". CLF's March 20, 2020, Form S-4 further stated that CLF entered into the New CLF ABL "to replace and refinance [CLF's existing asset-based lending facility] and [the AKS ABL]."¹⁶

⁸ See the following news release in connection with the announcement of the Tender Offers (dated March 13, 2020): <https://www.sec.gov/ix?doc=/Archives/edgar/data/918160/000119312520073104/d900491d8k.htm>.

⁹ See Offer to Purchase and Consent Solicitation Statement dated February 26, 2020 (**Tender Offer OM**) at 18 ("The closing of the Tender Offers and Consent Solicitations is subject to the satisfaction of . . . the consummation of the Merger."). The Tender Offer OM was made available by Global Bondholder Services Corporation at the time of the Tender Offer.

¹⁰ See the following Form 8-K announcing the consummation of the Merger (March 13, 2020): <http://d18m0p25nwr6d.cloudfront.net/CIK-0000764065/be3341f7-e6e9-4090-b794-aa6f020d8ed7.pdf>.

¹¹ See the following news release in connection with the Exchange Offers (dated February 11, 2020): <https://www.businesswire.com/news/home/20200211006089/en/Cleveland-Cliffs-AK-Steel-Holding-Corporation-Announce-Extension>

¹² See the following Form 8-K filing in connection with the Tender Offer (March 13, 2020): <http://d18m0p25nwr6d.cloudfront.net/CIK-0000764065/be3341f7-e6e9-4090-b794-aa6f020d8ed7.pdf>.

¹³ The exact amount outstanding under the AKS ABL facility at the time of repayment on March 13, 2020 could not be confirmed based on public filings.

¹⁴ It is unclear whether AKS or CLF used cash or financing, such as drawing on the full amount of the Original CLF ABL (defined below), to repay the AKS ABL in full. See the following Form 8-K filing in connection with the termination of the AKS ABL (March 13, 2020): <https://www.sec.gov/ix?doc=/Archives/edgar/data/918160/000119312520073104/d900491d8k.htm>.

¹⁵ See the following Form 8-K filing in connection with the CLF ABL (March 13, 2020): <http://d18m0p25nwr6d.cloudfront.net/CIK-0000764065/be3341f7-e6e9-4090-b794-aa6f020d8ed7.pdf>.

¹⁶ See the following Form S-4 filing summarizing the financing reorganization associated with the Merger (March 20, 2020): <https://www.sec.gov/Archives/edgar/data/764065/000076406520000126/clf2020s-4document.htm>.

- (vi) CLF entered into an indenture relating to the issuance of CLF of 6.75% Senior Secured notes due 2026 in an aggregate principal amount of \$725 million (**CLF 2026 Notes**).¹⁷ A portion of the proceeds from the CLF 2026 Notes offering was used to repurchase all of the AKS Tender Notes validly tendered and not withdrawn prior to the March 10, 2020 early participation deadline.¹⁸
- (f) On March 16, 2020, CLF confirmed through a Form 8-K filing¹⁹ that on March 16, 2020 CLF settled the Exchange Offers and issued the New CLF Notes, resulting in (i) the exchange of AKS 2025 Exchange Notes for New CLF 2025 Notes, leaving \$38.408 million outstanding AKS 2025 Exchange Notes and \$231.824 million outstanding New CLF 2025 Notes; and (ii) the exchange of AKS 2027 Exchange Notes for the New CLF 2027 Notes, resulting in \$56.256 million outstanding AKS 2027 Exchange Notes and \$335.376 million outstanding New CLF 2027 Notes. Additionally, on March 16, 2020, CLF executed indentures governing the New CLF 2025 Notes and the New CLF 2027 Notes.

2. RELEVANT OBLIGATIONS OF AKS

- (a) The Americas DC identified the following notes issued by AKS (the **AKS Notes**), as well as the AKS ABL. As noted in the table below, two series were tendered for exchange for the new CLF Notes. Based on Eligible Information, the Americas DC did not identify any other debt of AKS that was outstanding at the time of the Offer.

Title of Series/	Aggregate Principal Amount Outstanding (USD mm) prior to the Exchange Offer (AKS Exchange Notes) ²⁰ / Tender Offer (AKS Tender Notes) ²¹	Amount outstanding at AKS immediately prior to March 16, 2020	Aggregate Principal Amount Tendered and Accepted (USD mm) ²²
<i>AKS Exchange Notes</i>			
AKS 2025 Exchange Notes ²³	270.232	270.232	231.824
AKS 2027 Exchange Notes ²⁴	391.632	391.632	335.376

¹⁷ See the following Form 8-K filing in connection with the CLF 2026 Notes (March 13, 2020): <http://d18m0p25nwr6d.cloudfront.net/CIK-0000764065/be3341f7-e6e9-4090-b794-aa6f020d8ed7.pdf>.

¹⁸ See the following Form S-4 filing summarizing the financing reorganization associated with the Merger (March 20, 2020): <https://www.sec.gov/Archives/edgar/data/764065/000076406520000126/clf2020s-4document.htm>.

¹⁹ See the following Form 8-K filing in connection with the confirmation of settlement of the Exchange Offer (dated March 16, 2020): <https://www.sec.gov/ix?doc=/Archives/edgar/data/764065/000076406520000093/a20200316-8kxsettleme.htm>.

²⁰ Amounts are as of the time prior to the commencement of the Exchange Offer and have been extracted from the Exchange Offer OM.

²¹ Amounts are as of the time prior to the commencement of the Tender Offer and have been extracted from the Tender Offer OM.

²² Amounts have been extracted from the CLF Form S-4 and rounded to 3 decimal points (March 20, 2020): <https://www.sec.gov/Archives/edgar/data/764065/000076406520000126/clf2020s-4document.htm>.

²³ CUSIP: 001546AV2.

²⁴ CUSIP: 001546AU4.

Total		661.864	567.200
<i>AKS Tender Notes</i>			
AKS 2023 Secured Notes ²⁵	380.000	69.342	310.700
AKS 2021 Notes ²⁶	406.200	42.000	364.200
Total:		111.342	674.9
<i>Certain industrial revenue bonds (the Industrial Revenue Bonds) and ABL</i>			
Industrial Revenue Bonds	92.000 ²⁷	92.000	N/A
AKS ABL	450.000 ²⁸	0.000	N/A

3. APPROACH UNDER THE 2014 DEFINITIONS

Under the 2014 Definitions, the determination of a Successor focuses on the proportion of "Relevant Obligations" that an entity "succeeds" to on a given date.

The AKS Exchange Notes were exchanged via the Exchange Offers for the New CLF Notes, which were issued on March 16, 2020.²⁹ Therefore, the Americas DC identified March 16, 2020 as the relevant potential Succession Date for purposes of the 2014 Definitions.³⁰

4. ANALYSIS UNDER THE 2014 DEFINITIONS

- (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".³¹ "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

²⁵ CUSIP: 001546AT7.

²⁶ CUSIP: 001546AS9.

²⁷ See AKS Form 8-K filing in connection with AKS refinancing its outstanding tax-exempt and taxable industrial revenue bonds (January 17, 2012): <https://ir.aksteel.com/node/10631/html> and AKS/CLF Merger Presentation ("Cleveland-Cliffs to Acquire AK Steel", dated December 3, 2019). Note that excluding the Industrial Revenue Bonds from the Section 2.2 calculations would not affect the result under Section 2.2.

²⁸ This figure was correct as of December 31, 2019 - see AK Holding's Form 10-K filing: <https://ir.aksteel.com/static-files/787c503d-2e9b-4d82-8c05-28d7800b865e>. The exact amount outstanding under the AKS ABL facility at the time of repayment on March 13, 2020 could not be confirmed based on public filings.

²⁹ See the following Form 8-K in connection with the issuance of the New CLF Notes (March 16, 2020): <https://www.sec.gov/ix?doc=/Archives/edgar/data/764065/000076406520000093/a20200316-8kxsettleme.htm>.

³⁰ See Section 2.2(j) of the 2014 Definitions (describing the "Succession Date" as the "legally effective date of an event in which one or more entities succeed to some or all of the Relevant Obligations of the Reference Entity"); see also Section 2.2(d) of the 2014 Definitions (defining succession as occurring when an entity other than the Reference Entity "issues Bonds or incurs Loans (the "Exchange Bonds or Loans") that are exchanged for Relevant Obligations [...]" (emphasis added)). The Americas DC has generally treated the settlement date of an exchange as the Succession Date for purposes of the 2014 Definitions.

³¹ Section 2.2(d) of the 2014 Definitions.

immediately prior to the Succession Date".³² The term "Obligation" may include "obligations of the Reference Entity (either directly or as provider of a Relevant Guarantee)".³³

- (b) Because Relevant Obligations are only determined "immediately prior to the Succession Date" (in this case, March 16, 2020), the Americas DC determined that only the AKS Exchange Notes, the AKS Tender Notes, and the Industrial Revenue Bonds outstanding at AKS immediately prior to March 16, 2020 constituted Relevant Obligations of AKS. The Americas DC determined that the AKS Tender Notes that were redeemed on March 13, 2016, and the AKS ABL facility that was paid off in full on March 13, 2016, were not Relevant Obligations of AKS. The denominator of the Successor calculations under Section 2.2(a) of the 2014 Definitions was therefore USD 865.206mm.³⁴
- (c) The Americas DC determined that the AKS Exchange Notes that were tendered and accepted in the Exchange Offer, and that were therefore exchanged for New CLF Notes, constituted Relevant Obligations of AKS that were succeeded to by CLF. The numerator of the Successor calculations under Section 2.2(a) of the 2014 Definitions was therefore USD 567.200mm.
- (d) As a result, the calculation to determine the percentage of the Relevant Obligations of AKS that had been succeeded to by CLF was as follows: $\text{USD } 567.200\text{mm} / \text{USD } 865.206\text{mm} = 65.6\%$ ³⁵. The calculation to determine the percentage of the Relevant Obligations of AKS that remained with AKS was as follows: $\text{USD } 297.964\text{mm} / \text{USD } 865.206\text{mm} = 34.4\%$.³⁶
- (e) On account of the above calculation, the Americas DC determined that (i) CLF had succeeded to more than 25% of the Relevant Obligations of AKS, (ii) more than 25% of the Relevant Obligations of AKS remained with AKS, and (iii) therefore Section 2.2(a)(iv) of the 2014 Definitions applied. As a result, each of AKS and CLF were determined to be Successors, and the provisions of Section 2.2(n) of the 2014 Definitions³⁷ applied to outstanding Credit Derivative Transactions that specified AKS as the Reference Entity.

³² Section 2.2(f) of the 2014 Definitions.

³³ Section 3.1(a) of the 2014 Definitions. Note further that under the Credit Derivatives Physical Settlement Matrix for North American Corporate / Standard North American Corporate Transaction Types, a Relevant Guarantee must be a Qualifying Affiliate Guarantee (see Section 3.22 of the 2014 Definitions). A Qualifying Affiliate Guarantee means a Qualifying Guarantee provided by the Reference Entity in respect of an Underlying Obligation of a Downstream Affiliate of the Reference Entity (see Section 3.27 of the 2014 Definitions).

³⁴ 661.864mm of AKS Exchange Notes + 111.342mm of AKS Tender Notes + 92.000mm of Industrial Revenue Bonds. The AKS ABL facility was repaid in full on March 13, 2020, as discussed above.

³⁵ This percentage has been rounded to the nearest 1 decimal point. The percentage before rounding is 65.55664200202033%.

³⁶ This percentage has been rounded to the nearest 1 decimal point. The percentage before rounding is 34.43850366271154%.

³⁷ These provisions require, among other things, division of the existing Credit Derivative Transaction into multiple new Credit Derivative Transactions (in this case, one for AKS and one for CLF), with the Floating Rate Payer Calculation Amount (i.e., the notional) of the existing Credit Derivative Transaction distributed equally among such new Credit Derivative Transactions.