

EMEA DC MEETING STATEMENT 30 JUNE 2020

1. SUMMARY

- 1.1 The DC met on 30 June 2020 to discuss whether a Bankruptcy Credit Event has occurred with respect to Wirecard AG (the **Reference Entity**) as a result of its application to the Munich District Court on 25 June 2020 for the opening of insolvency proceedings over its assets.¹
- 1.2 The DC resolved:
- (a) that a Bankruptcy Credit Event has occurred with respect to the Reference Entity for 2014 Transactions;
 - (b) that the Bankruptcy Credit Event with respect to the Reference Entity and such transactions occurred on 25 June 2020; and
 - (c) that the Credit Event Resolution Request Date is 26 June 2020.
- 1.3 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, as amended on March 30, 2020) (including in the 2014 Definitions as defined therein) (the **DC Rules**).

2. FACTUAL BACKGROUND

- 2.1 On 25 June 2020, the Reference Entity announced that it would apply for insolvency proceedings to be opened with the Munich District Court due to imminent illiquidity and over-indebtedness.²
- 2.2 On 26 June 2020, the Munich District Court confirmed that it had received the application at 5:05pm (Munich time) on 25 June.³ A newspaper article also reported that the "German group" had filed for insolvency on 25 June.⁴
- 2.3 On 29 June 2020, the Munich District Court decided to open preliminary insolvency proceedings over the assets of the Reference Entity and appoint Mr. Michael Jaffé as preliminary insolvency administrator (*vorläufiger Insolvenzverwalter*) (the **PIA**).⁵

3. PUBLICLY AVAILABLE INFORMATION

- 3.1 The DC considered that there was sufficient Publicly Available Information in order to determine the occurrence of a Credit Event on the basis of the Reference Entity's announcement of its intention to apply for insolvency proceedings and the Munich District's Court announcement that it had opened preliminary insolvency proceedings in accordance with Section 1.35(a)(iii) of the 2014 Definitions.

¹ The DC was asked to consider the question with respect to the 2014 Definitions only.

² Announcement available at <https://ir.wirecard.com/websites/wirecard/English/5110/news-detail.html?newsID=1988247>

³ Court statement (in German only) available here <https://www.justiz.bayern.de/gerichte-und-behoerden/amtsgerichte/muenchen/presse/2020/26.php>

⁴ Available here <https://www.ft.com/content/8dfc0da9-df24-4b4e-8e7e-8d803b873e22>

⁵ Court order (in German only) available here https://www.insolvenzbeamtungen.de/cgi-bin/bl_aufzuf.pl?PHPSESSID=6124b1db88b44b7d77624c012d3c74b9&datei=gerichte/by/agmuenchen/20/1542_IN_1308_20/2020_06_29_13_07_43_Sicherungsmaßnahmen.htm, or if archived, either by searching for the Reference Entity here <https://www.insolvenzbeamtungen.de/>, or by searching for details of the Reference Entity after selecting the relevant court district.

4. WHETHER A BANKRUPTCY CREDIT EVENT HAS OCCURRED IN RELATION TO 2014 TRANSACTIONS

4.1 Limb (d) of the definition of Bankruptcy Credit Event in Section 4.2 of the 2014 Definitions provides as follows:

"the Reference Entity... institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other similar relief under any bankruptcy or insolvency law or other law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation, or (ii) is not dismissed, discharged, stayed or restrained in each case within thirty calendar days of the institution or presentation thereof"

4.2 Taking each of the requirements in turn:

(a) ***"the Reference Entity... institutes or has instituted against it a proceeding seeking"***.

The DC was of the view that the Reference Entity having filed the application for the opening of insolvency proceedings constituted the institution of proceedings by the Reference Entity. As the definition requires that the Reference Entity simply institutes the proceedings seeking relief, rather than requiring that the court opens insolvency proceedings, the DC considered this to have occurred on 25 June 2020.

(b) ***"under any bankruptcy or insolvency law or other law affecting creditors' rights"***

The law under which the application is filed is the German Insolvency Code (*Insolvenzordnung - InsO*), which is a bankruptcy or insolvency law or other law affecting creditors' rights.

(c) ***"a proceeding seeking a judgment of insolvency or bankruptcy or any other similar relief"***

The DC was of the view that the preliminary proceedings satisfied the definition of insolvency proceedings, and noted that: (i) the proceedings applied for were specified by the Reference Entity and by the Munich District Court as insolvency proceedings; (ii) the type of application made by the Reference Entity is always the first step for the commencement of insolvency proceedings in Germany; and (iii) pursuant to the court order by the Munich District Court regarding the opening of preliminary proceedings on 29 June, dispositions of the Reference Entity's assets would only be effective with the consent of the PIA.

(d) ***"or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation, or (ii) is not dismissed, discharged, stayed or restrained in each case within thirty calendar days of the institution or presentation thereof"***

This part of the definition is not relevant as the Reference Entity made the application itself.

4.3 The DC therefore concluded that the elements of limb (d) of the definition of Bankruptcy Credit Event in Section 4.2 of the 2014 Definitions were satisfied by the application by the Reference Entity on 25 June 2020.

- 4.4 The DC considered that the conclusion above was more straightforward than its previous determinations of Bankruptcy Credit Events in respect of other Reference Entities, as the application by the Reference Entity in this instance was for a formal insolvency proceeding, rather than a business reorganisation / restructuring proceeding.
- 4.5 The DC also noted that the factual background could invite consideration of whether a Bankruptcy Credit Event had occurred under limb (b) or limb (f) of the definition in Section 4.2 of the 2014 Definitions. However, given the occurrence under limb (d) was determined, the DC concluded it was not necessary to explore further.