

## DC Meeting Statement – 12 October 2020

The EMEA DC met today to consider whether or not a Bankruptcy Credit Event has occurred with respect to Selecta Group B.V. (the **Reference Entity**) as a result of the filing of a petition (the **Chapter 15 Petition**) with the United States Bankruptcy Court for the Southern District of Texas (the **US Bankruptcy Court**) under Chapter 15 of Title 11 of the United States Code (as amended, the **Bankruptcy Code**) by the foreign representative of the Reference Entity on 8 October 2020. The Chapter 15 Petition sought recognition in the United States of the scheme of arrangement under the UK Companies Act 2006 in respect of the Reference Entity's debt (the **Scheme**).

The EMEA DC has previously considered Chapter 15 petitions in the context of Matalan Finance plc (**Matalan**) and Thomas Cook Group plc (**Thomas Cook**). The EMEA DC published a detailed summary of its reasoning in relation to Matalan (which also summarised the approach taken in respect of Thomas Cook) (see EMEA DC Meeting Statement 14 August 2020).

A Chapter 15 case is commenced when a "foreign representative" (here, the interim CFO of Selecta), files a petition with a bankruptcy court seeking recognition of a "foreign proceeding" as either a "foreign main proceeding," which is a foreign proceeding that is pending where the debtor has its "center of main interests," or a "foreign nonmain proceeding," which means it is pending where the debtor has an "establishment."

In relation to Thomas Cook, the Chapter 15 petition was notable in that Thomas Cook did not seek the imposition of a stay (which the EMEA DC considered particularly significant in adjudging whether the given relief was "similar relief" under Section 4.2(d) of the 2014 Definitions). In addition the EMEA DC noted that the petition did not seek to compromise directly creditors' rights independently of the scheme of arrangement, and on the basis of this and the absence of a stay, the EMEA DC determined that the relief under the petition in Thomas Cook was clearly limited and as such was not "similar" to that of a judgment of insolvency or bankruptcy. Accordingly, the EMEA DC determined that the Chapter 15 petition in Thomas Cook did not give rise to a Bankruptcy Credit Event in respect of 2014 Transactions.

In contrast, in relation to Matalan, the Chapter 15 petition sought recognition of a foreign main proceeding which would entail the imposition of an automatic stay upon such recognition. In addition, Matalan sought provisional relief during the pendency of the Chapter 15 Petition against the holders of the Second Lien Notes. Accordingly, based on the approach in Thomas Cook and the nature of the relief, the DC was of the view that the Chapter 15 Petition would constitute a Bankruptcy Credit Event under Section 4.2(d) of the 2014 Definitions.

In this case the Reference Entity is seeking recognition as a foreign nonmain proceeding. In the case of a "foreign nonmain proceeding," as noted above, the stay is not automatic - such relief is subject to bankruptcy court approval and the satisfaction of the standards for discretionary relief after recognition is granted. The Reference Entity has requested the imposition of such a stay in connection with recognition. Further, the Reference Entity also applied for provisional relief pursuant to section 1519 of the Bankruptcy Code, including the provisional application of section 362 of the Bankruptcy Code. Such relief was granted pursuant to an order of the US Bankruptcy Court on 9 October 2020. Therefore, based on the approach taken in Thomas Cook and Matalan and taking into account the request for provisional relief, the EMEA DC was of the view that the Chapter 15 Petition would constitute a Bankruptcy Credit Event under Section 4.2(d) of the 2014 Definitions.

The EMEA DC also concluded that it will hold an Auction to settle 2014 Transactions in respect of which the Credit Event has occurred. The EMEA DC is reviewing (i) the Euro 5 and 7/8% Senior Secured Notes due 2024; (ii) the Euro Senior Secured Floating Rate Notes due 2024; and (iii) the CHF 5 and 7/8% Senior Secured Notes due 2024 to assess deliverability. Please contact the DC Secretary as soon as possible if you are aware of other obligations of the Reference Entity that could be relevant for the Auction.

The EMEA DC agreed to meet again on 13 October 2020 to continue discussions on the Auction.