

Americas Credit Derivatives Determinations Committee Statement – April 14, 2022

Uniti Group Inc. Substitute Reference Obligation Determination

DC Issue Number 2022032501

The Americas DC is providing the following statement in connection with the General Interest Question relating to Uniti Group Inc. (**Uniti**) (DC Issue Number 2022032501) under the 2014 ISDA Credit Derivatives Definitions (the **2014 Definitions**) as published by the International Swaps and Derivatives Association, Inc.

The Americas DC Resolved on April 14, 2022 that subject to the discussion at Section 2(e) and Section 2(f) below, the 6.00% Senior Notes due 2030 issued *inter alia* by Uniti LP and guaranteed by Uniti (the **Guaranteed 6.00% Notes**) constitute a Non-Conforming Substitute Reference Obligation for purposes of Credit Derivative Transactions incorporating the 2014 Definitions that specify the 7.125% Senior Notes due 2024 issued *inter alia* by Uniti LP and guaranteed by Uniti (the **Guaranteed 7.125% Notes**) as a Non-Conforming Reference Obligation (**Relevant Uniti Transactions**).¹

The Americas DC is providing the following statement in connection with its Substitute Reference Obligation determination.

1. SUMMARY OF EVENTS AND RELEVANT GUARANTEE PROVISIONS

- (a) As of May 9, 2017, a number of Uniti group issuers and Uniti executed a Fourth Supplemental Indenture in connection with the Guaranteed 7.125% Notes, adding Uniti as a guarantor of the issuers' payment obligations under the Guaranteed 7.125% Notes.² Uniti's guarantee of the Guaranteed 7.125% Notes included the following release provision: "This Parent Guarantee shall be automatically and unconditionally released and discharged, and no further action by the Parent [Uniti], the Issuers or the Trustee is required for the release of this Parent Guarantee upon... the Parent's written request to the Trustee [...]"³
- (b) On December 15, 2021, the Guaranteed 7.125% Notes were redeemed in whole,⁴ which the Americas DC determined constitutes a Substitution Event under the 2014 Definitions.⁵

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. For the avoidance of doubt, this DC Resolution does not apply to credit derivative transactions that incorporate the Updated 2003 Definitions.

² See the following Fourth Supplemental Indenture in connection with the Guaranteed 7.125% Notes (May 9, 2017): https://www.sec.gov/Archives/edgar/data/1620280/000110465917031184/a17-12744_1ex4d6.htm.

³ Id., Section 2.04.

⁴ See the following Form 8-K filing confirming the redemption event (December 15, 2021): https://www.sec.gov/ix?doc=/Archives/edgar/data/1620280/000095010321015859/dp159744_8k.htm (the **Redemption Event Filing**).

⁵ See Section 2.11(a)(i) of the 2014 Definitions. December 15, 2021 is therefore the relevant "Substitution Event Date" under Section 2.20 of the 2014 Definitions.

- (c) The Guaranteed 7.125% Notes were redeemed using the proceeds of the Guaranteed 6.00% Notes, which were issued on October 13, 2021.⁶ The Guaranteed 6.00% Notes include a guarantee by Uniti of the payment obligations of the issuers of the Guaranteed 6.00% Notes.⁷ Uniti's guarantee of the Guaranteed 6.00% Notes includes the following release provision: "The Parent Guarantee may be released at any time upon request of Parent [Uniti] [...]"⁸

2. ANALYSIS UNDER THE 2014 DEFINITIONS

- (a) The DC Question proposed that Uniti's guarantee of the Guaranteed 6.00% Notes constitute the Substitute Reference Obligation for Relevant Uniti Transactions.
- (b) The 2014 Definitions provide that for a Non-Conforming Reference Obligation that is a Bond, the relevant Substitute Reference Obligation shall be a Non-Conforming Substitute Reference Obligation, if available.⁹

For this purpose (i) a Non-Conforming Reference Obligation is defined as a "Reference Obligation which is not a Conforming Reference Obligation,"¹⁰ (ii) a Conforming Reference Obligation is defined as a "Reference Obligation which is a Deliverable Obligation determined in accordance with Section 3.2(a) (*Deliverable Obligation*),"¹¹ and (iii) a Non-Conforming Substitute Reference Obligation is defined as "an obligation which would be a Deliverable Obligation determined in accordance with Section 3.2(a) (*Deliverable Obligation*) on the Substitution Date *but for one or more of the same reasons which resulted in the Reference Obligation constituting a Non-Conforming Reference Obligation on the date it was issued or incurred and/or immediately prior to the Substitution Event Date* (as applicable)" (emphasis added).¹²

- (c) The Americas DC determined that:
- (i) The guarantee in respect of the Guaranteed 7.125% Notes constitutes a Non-Conforming Reference Obligation because it could be revoked by Uniti at any time unconditionally. A guarantee that can be revoked unconditionally does not constitute a Qualifying Guarantee because "pursuant to the terms applicable thereto, the principal payment obligations of the Reference Entity can be discharged, *released*, reduced, assigned or otherwise altered... other than by payment[...]"¹³ Because the guarantee in respect of the Guaranteed 7.125% Notes was not a Qualifying Guarantee, it could not be a Deliverable Obligation in accordance with Section 3.2(a) of the 2014 Definitions. Therefore, in respect of Relevant Uniti Transactions, this guarantee is a Non-Conforming Reference Obligation.
- (ii) The guarantee in respect of the Guaranteed 6.00% Notes constitutes a Non-Conforming Substitute Reference Obligation in respect of Relevant Uniti Transactions because it can be unconditionally revoked by Uniti at any time and was therefore not a Qualifying Guarantee for the same reasons as described in 2(c)(1) above. Therefore, immediately prior to the Substitution Event Date, the guarantee in respect of the Guaranteed 6.00% Notes did not qualify as a Deliverable Obligation for the same reason that the guarantee in respect of the Guaranteed 7.125% Notes did not qualify as a Deliverable Obligation.

⁶ See the Redemption Event Filing, Item 1.01.

⁷ See the following Indenture in connection with the Guaranteed 6.00% Notes (October 13, 2021): https://www.sec.gov/Archives/edgar/data/1620280/000095010321015859/dp159744_ex0401.htm.

⁸ Id., Section 10.06.

⁹ See Section 2.10(c)(iii)(B) of the 2014 Definitions.

¹⁰ See Section 2.14 of the 2014 Definitions.

¹¹ See Section 2.13 of the 2014 Definitions.

¹² See Section 2.15 of the 2014 Definitions.

¹³ See Section 3.21(b) of the 2014 Definitions (emphasis added). The Americas DC notes that none of the exclusions in Section 3.21(b)(i) through (v) are relevant for the guarantee of the Guaranteed 7.125% Notes.

- (d) The Americas DC notes that it is not reaching a determination with respect to the status of the Guaranteed 6.00% Notes as a Deliverable Obligation. In this regard, the Americas DC notes that in order for the Guaranteed 6.00% Notes to constitute a Deliverable Obligation, the guarantee of the Guaranteed 6.00% Notes would be required to have an Outstanding Principal Balance greater than zero as of the relevant date of determination, and that a reduction of the Outstanding Principal Balance to zero as a result of either (i) a release of the guarantee or (ii) a determination in relation to the Quantum of the Claim on or prior to such date of determination, would cause the guarantee not to be a Deliverable Obligation, notwithstanding the fact that it has been specified as the Reference Obligation.¹⁴ Any release of the guarantee in respect of the Guaranteed 6.00% Notes could also constitute a "Substitution Event" for purposes of Section 2.11 of the 2014 Definitions, which would result in the need to determine a new Substitute Reference Obligation in accordance with Section 2.10 of the 2014 Definitions.
- (e) The Americas DC further notes that, pursuant to the terms of the Section 10.2 of the 2014 Definitions, "if the effect of a DC Resolution would be to reverse... any determination made by the Calculation Agent that is effectively notified to the parties to the Credit Derivative Transactions prior to the fifth Business Day which immediately precedes... a Substitute Reference Obligation Resolution Request Date.¹⁵... then such DC Resolution shall not be effective for the purposes of the Credit Derivative Transaction." As a result, if the Calculation Agent in respect of a Relevant Uniti Transaction (including any clearinghouse acting as Calculation Agent in respect of cleared Relevant Uniti Transactions) made a determination of an alternative Substitute Reference Obligation and effectively notified the parties of such determination on or prior to March 18, 2022 (a **Prior Substitute Reference Obligation Determination**), such Prior Substitute Reference Obligation Determination is not reversed or otherwise affected by this DC Resolution.
- (f) The Americas DC understands that prior to March 18, 2022, one or more clearinghouses, acting as Calculation Agent, may have already determined that a different obligation than the Guaranteed 6.00% Notes is the Substitute Reference Obligation for all Relevant Uniti Transactions cleared at such clearinghouse(s). This DC Resolution will not alter any such Prior Substitute Reference Obligation Determination by a clearinghouse acting as Calculation Agent, and notwithstanding this DC Resolution, separate auctions may need to be conducted in respect of Relevant Uniti Transactions subject to this DC Resolution and Relevant Uniti Transactions that are the subject of a Prior Substitute Reference Obligation Determination.

¹⁴ See Section 3.2 of the 2014 Definitions.

¹⁵ The Americas DC has Resolved that the Substitute Reference Obligation Request Date in respect of DC Issue 2022032501 is March 25, 2022.