

Americas Credit Derivatives Determinations Committee Statement – September 28, 2022

Uniti Group Inc. Substitute Reference Obligation Determination

DC Issue Number 2022091501

The Americas DC is providing the following DC Meeting Statement in connection with the General Interest Question relating to Uniti Group Inc. (**Uniti**) (DC Issue Number 2022091501) 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 September 28, 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 8.25% Senior Notes due 2023 issued *inter alia* by Uniti Group Finance 2019 Inc. and guaranteed by Uniti (the **Guaranteed 8.25% Notes**) as a Non-Conforming Reference Obligation (**8.25% Uniti Transactions**).¹

On April 14, 2022, the Americas DC Resolved that 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 (**7.125% Uniti Transactions**).²

The April Statement was limited in scope to 7.125% Uniti Transactions and did not identify a Substitute Reference Obligation for 8.25% Uniti Transactions. While the Substitute Reference Obligation determination set out below is substantially similar to the analysis set out in the April Statement with respect to 7.125% Uniti Transactions and also identifies the Guaranteed 6.00% Notes as the relevant Non-Conforming Substitute Reference Obligation, this DC Statement relates solely to 8.25% Uniti Transactions and does not affect the Americas DC's prior determination set out in the April Statement relating to 7.125% Uniti Transactions.

1. SUMMARY OF EVENTS AND RELEVANT GUARANTEE PROVISIONS

- (a) As of May 9, 2017, a number of Uniti group issuers and Uniti executed a Sixth Supplemental Indenture in connection with the Guaranteed 8.25% Notes, adding Uniti as a guarantor of the issuers' payment obligations under the Guaranteed 8.25% Notes.³ Uniti's guarantee of the Guaranteed 8.25% 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 [...]"⁴

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 DC Meeting Statement published on April 14, 2022, available [here](#) (the **April Statement**).

³ See the following Sixth Supplemental Indenture in connection with the Guaranteed 8.25% Notes (May 9, 2017): https://www.sec.gov/Archives/edgar/data/1620280/000110465917031184/a17-12744_1ex4d2.htm.

⁴ Id., Section 2.04.

- (b) On April 15, 2021, the Guaranteed 8.25% Notes were redeemed in whole,⁵ which the Americas DC determined constitutes a Substitution Event under the 2014 Definitions.⁶ The Guaranteed 8.25% Notes were redeemed using the proceeds of certain 6.50% Senior Notes due 2029, which were issued on February 2, 2021.⁷
- (c) The Guaranteed 6.00% Notes include a guarantee by Uniti of the payment obligations of the issuers of the Guaranteed 6.00% Notes.⁸ 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] [...]".⁹

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 8.25% 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.¹⁰

For this purpose (i) a Non-Conforming Reference Obligation is defined as a "Reference Obligation which is not a Conforming Reference Obligation,"¹¹ (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*),"¹² 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).¹³

- (c) The Americas DC determined that:
 - (i) The guarantee in respect of the Guaranteed 8.25% 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[...]"¹⁴ Because the guarantee in respect of the Guaranteed 8.25% 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 8.25% Uniti Transactions, this guarantee is a Non-Conforming Reference Obligation.

⁵ See the Uniti Form 10-Q filing for the quarterly period ending March 31, 2021, confirming the redemption event: https://www.sec.gov/ix?doc=/Archives/edgar/data/1620280/000156459021026041/unit-10q_20210331.htm (the **Redemption Event Filing**) at p. 35.

⁶ See Section 2.11(a)(i) of the 2014 Definitions. April 15, 2021 is therefore the relevant "Substitution Event Date" under Section 2.20 of the 2014 Definitions.

⁷ See the Redemption Event Filing, p. 35.

⁸ 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.

⁹ Id., Section 10.06.

¹⁰ See Section 2.10(c)(iii)(B) of the 2014 Definitions.

¹¹ See Section 2.14 of the 2014 Definitions.

¹² See Section 2.13 of the 2014 Definitions.

¹³ See Section 2.15 of the 2014 Definitions.

¹⁴ 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 8.25% Notes.

- (ii) The guarantee in respect of the Guaranteed 6.00% Notes constitutes a Non-Conforming Substitute Reference Obligation in respect of 8.25% 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 8.25% Notes did not qualify as a Deliverable Obligation.
- (d) The Americas DC notes that, for the same reasons described in the April Statement¹⁵, 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.¹⁶ 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 Date¹⁷... 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 8.25% Uniti Transaction made a determination of an alternative Substitute Reference Obligation and effectively notified the parties of such determination prior to September 8, 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 unlike the Guaranteed 7.125% Notes, the Guaranteed 8.25% Notes have not been the subject of a prior Substitute Reference Obligation determination made by a clearinghouse acting in the capacity of Calculation Agent. For the avoidance of doubt, this DC Resolution does not relate to any Credit Derivative Transactions other than the 8.25% Uniti Transactions (and therefore does not affect Uniti Credit Derivative Transactions already subject to the April Statement or subject to a prior Substitute Reference Obligation determination made by a clearinghouse acting in the capacity of Calculation Agent).

¹⁵ See April Statement, Paragraph 2(d).

¹⁶ See Section 3.2 of the 2014 Definitions.

¹⁷ The Americas DC has Resolved that the Substitute Reference Obligation Request Date in respect of DC Issue 2022091501 is September 15, 2022.