Ardagh Packaging Finance PLC | Issue Number 2025100602

We, an Eligible Market Participant, hereby challenge the inclusion of the following Senior Unsecured Notes ("SUNs") on the Final List of Deliverable Obligations for Ardagh Packaging Financing PLC ("Ardagh" or the "Company"):

- ISIN: US03969AAP57 (144A) / USG04586AR70 (Reg S), USD 800,000,000 5.250% Senior Notes due 15 August 2027

- ISIN: US03969AAR14 (144A) / USG04586AU00 (Reg S), USD 1,000,000,000 5.250% Senior Notes due 15 August 2027

- ISIN: XS1628849645 (144A) / XS1628848241 (Reg S), GBP 400,000,000 4.750% Senior Notes due 15 July 2027

In order to qualify as a "Deliverable Obligation," an obligation must have an "Outstanding Principal Balance" of "greater than zero" as of the Credit Event Resolution Request Date, 7 October 2025. The SUNs had no Outstanding Principal Balance as at 29 September 2025. As of that date, the entire principal balance of the SUNs could "pursuant to the terms of the obligation[s] . . . otherwise be reduced as a result of the effluxion of time or the occurrence or non-occurrence of an event or circumstance"[1]—namely, the closing of the transaction.

This finding is consistent with, and indeed follows from, the External Review Panel's decision (the "Decision") for two independent reasons:

First, the collective action clauses in the *existing* indentures, which permitted a write down of principal with 90 percent of noteholder consent,[2] were critical to the Panel's conclusion that there had been a Restructuring. The Panel found that the Transaction Support Agreement ("TSA") combined with the launch of the pre-agreed consent solicitations operated to bind, **by the "effect of the existing indenture[s]**,"[3] ***all*** holders of the SUNs to a transaction that would result in a mandatory exchange into equity interests in a new entity. Accordingly, as at 29 September 2025, the collective action clauses—indisputably, part of the "terms of the obligation[s]"—created a contingency, no longer within the control of the holders, that could reduce the principal balance of the SUNs to 0.

Second, and in any event, the effect of the Panel's decision is that "terms of the obligation" must include the Restructuring agreement arising out of the TSA and the pre-agreed consent solicitations because ***all*** **noteholders were bound by this agreement**. This agreement therefore

[1] 2014 ISDA Credit Derivatives Definitions (the "Definitions") §§ 3.8(a)(ii).

[2] Statement of Agreed Facts with respect to the Reviewable Questions agreed by the Advocates for the "No" Position and the "Yes" Position ¶ 1.4.

[3] Decision ¶ 17(d)(vi) (emphasis added).

became part and parcel of the SUNs "terms," with or without formal amendment. Any purchaser of the notes after 29 September 2025 was acquiring the SUNs subject to that contingency, and the agreement is therefore relevant to calculating Outstanding Principal Balance. Section 3.8(a)(ii) does not compel an artificially narrow interpretation of the phrase "terms of the obligation" that is limited to the four corners of the bond indenture while ignoring other relevant and related terms to which all noteholders are bound as at that date.

For either of these independent reasons, the DC should conclude that the SUNs had no Outstanding Principal Balance as of 29 September 2025 and therefore should decline to include them on the Final List as Deliverable Obligations.

Those advocating for a finding of Outstanding Principal Balance, on the other hand, ask the DC to ignore the text of the Definitions in order to reverse engineer a particular economic outcome for the settlement of the CDS. That position is directly at odds with the Panel's decision and would lead to arbitrary and absurd results. It should be rejected.

Put another way, a finding that the SUNs continued to have an Outstanding Principal Balance would turn them into Schrödinger's Obligations, existing in two opposite states at once: bound to a transaction causing a reduction in the amount of principal payable (via equitization) for the purposes of determining that a Restructuring has occurred, but at the same time subject to no contingency causing a reduction in their principal balance for the purposes of determining whether they had an Outstanding Principal Balance.

That position is untenable. The DC should correct its course on this matter.

I. The Panel's Decision Establishes that the SUNs, Pursuant to Their Terms, May Otherwise be Reduced to 0 Based on a Non-Permitted Contingency

A. *The Non-Permitted Contingency Existed Pursuant to the Terms of The Obligations Because The Restructuring Relied on their Collective Action Clauses*

Section 3.8(a)(ii) of the Definitions directs that Outstanding Principal Balance will be calculated by "subtracting all or any portion of such amount which, pursuant to the terms of the obligation . . . may otherwise be reduced as a result of the effluxion of time or the occurrence or non-occurrence of an event or circumstance," excepting specified Permitted Contingencies (none of which, as per the below, are applicable here). In Ardagh's case, the Panel found that the principal balance of the SUNs could be reduced to 0 "pursuant to the terms of" the collective action clauses in the *existing* indenture, which were used to effectuate an equitization transaction to which all holders were bound.

Specifically, the parties agreed to a transaction in which 100% of the SUNs were to be transferred to a new entity (Yeoman Capital S.A.), with the SUN Holders receiving ordinary shares of that new entity as consideration.[4] The transaction was implemented via a pre-agreed consent solicitation, which consenting holders were obligated to support (as a result of signing the TSA); this in turn meant, as the Panel found, that *all* holders of the SUNs were bound, by

[4] See 29 September 2025 Press Release.

operation of the collective action clause in each of their indentures. This triggered a Restructuring because it reflected an agreement to "a reduction in the amount of principal or premium payable at redemption" under Section 4.7(a)(ii)[5] and *all* SUN holders were bound to such agreement under the "effect of the existing indenture."[6]

The Panel made two important findings in this regard.

First, the Panel made clear that a Restructuring by agreement is only triggered when "all noteholders are in fact bound to the event."[7] And, notably, in reaching that holding, the Panel expressly rejected the argument (asserted by the proponents of the "Yes" position) that "it does not matter whether the effect of the agreement is to bind all the holders at that stage, provided only that it is capable of doing so at some stage."[8]

Second, it found that the "agreement" here—the combination of TSA and the pre-agreed consent solicitations—"did bind all such noteholders, whether consenting or not."[9] This was because "consenting parties are bound once they have agreed to a consensual restructuring event, notwithstanding the existence of outstanding conditions to implementation of that event, and that, once the necessary thresholds have been reached, **the effect of the existing indenture** is that the nonconsenting parties are also bound by the outcome of what has been agreed."[10]

The Decision therefore forecloses the argument, made by some in support of the finding that the SUNs had an Outstanding Principal Balance, that the "terms of the obligation did not provide that the SUNs would eventually be equitized" until the indentures were formally amended.[11]

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[5] See Written Submissions on Behalf of the Convened DC Members Who Support The Yes Position ¶ 53(1)(a) ("The SUN Equitisation would be a reduction in the principal payable at redemption given that the SUNs would be fully equitized so as to constitute a Section 4.7(a)(ii) event."); Brief Submitted by Milbank LLP (The "Milbank Brief" or "Milbank Br.") ¶ 17 ("The relevant event at issue concerning the indentures held by the SUN noteholders is set out in section 4.7(a)(ii), namely 'a reduction in the amount of principle or premium payable at redemption (including by way of redenomination).'"), available at https://www.cdsdeterminationscommittees.org/documents/2025/12/ardagh-er-isda-member-yes-brief-1.pdf/; Anonymous Brief Submitted in Support of Yes Position ¶ 7 ("Stopping to consider the specific case of Ardagh, it is uncontroversial that the SUNs constitute an Obligation of the Reference Entity, and that the SUNSs have been subject to a 'reduction in the amount of principal', as the entire principal balance of the SUNs was cancelled in return for equity allocations."), available at https://www.cdsdeterminationscommittees.org/documents/2025/12/ardagh-er-isda-member-yes-brief-3.pdf/.

[6] Decision ¶ 17(d)(vi).

[7] Decision ¶ 14(b).

[8] Decision ¶ 13.

[9] Decision ¶ 25.

[10] Decision ¶ 17(d)(vi) (emphasis added).

[11] See Milbank Brief ¶ 30.

The collective action clause in each of the SUNs *existing indentures* was critical to the Panel's finding, not merely the TSA and the support of the consenting noteholders standing alone. It is therefore entirely beside the point that Section 3.8(a) directs that Outstanding Principal Balance should be determined (as relevant here) "in accordance with the terms of the obligation in effect on . . . the NOPS Effective Date."[12] Without the *existing* collective action clause there would not have been an agreement binding *all* noteholders, the essential element that the panel concluded was necessary to trigger a Restructuring. That alone should end the matter.

That the collective action clause is a relevant "term[] of the obligation" is supported by other provisions of the Definitions as well.

First, Section 3.11(b) identifies certain "Permitted Contingenc[ies]" that do not result in a deduction to Outstanding Principal Balance, including "any reduction . . . which is within the control of the holders of the obligation . . . in exercising their rights under or in respect of such obligation." One of the purposes of that provision is to make "it clear that the fact that the terms of the obligation may be changed by agreement with the holders, so as to reduce the amount payable, does not affect the Outstanding Principal Balance." *Firth on Derivative Law and Practice* § 17-100.[13] Thus, it presupposes and demonstrates that the collective action clause is otherwise a relevant "term[] of the obligation" that *could* cause a reduction in principal balance when actioned by the holders and the Company.

This does not mean that every note subject to amendment or waiver should have its Outstanding Principal Balance reduced to 0. In most instances, the possibility of amendment would represent a Permitted Contingency because it would remain "within the control of the holders of the obligation."[14] But here the Decision establishes the existence of a non-Permitted Contingency: the Panel concluded that, as at 29 September 2025, the contingency was no longer within the control of the holders because the consenting noteholders were obligated to provide their consent and so all noteholders were bound.

Second, Section 4.10(b) recognizes that collective action clauses form part of the relevant "terms of the obligation." It defines a Multiple Holder Obligation to mean "an Obligation that (i) at the time of the event which constitutes a Restructuring Credit Event is held by more than three holders that are not Affiliates of each other and (ii) with respect to which a percentage of holders (determined **pursuant to the terms of the Obligation** as in effect on the date of such event) at least equal to sixty-six-and-two-thirds is required to consent to the event which constitutes a Restructuring Credit Event provided that any Obligation that is a Bond shall be deemed to satisfy the requirement in Section 4.10(b)(ii)." (emphasis added).

[12] Milbank Brief ¶ 29.

[13] The fact the clause may have other purposes—such as to address an optional redemption available to the obligee—does not change this.

[14] Definitions § 3.11(b).

It thus follows that the relevant amounts due under the SUNs could "pursuant to[15] the terms of the obligation [i.e., the collective action clause actioned by the holders and Company] . . . otherwise be reduced as a result of the effluxion of time or the occurrence or non-occurrence of an event or circumstances"—namely, the closing of the transaction, which ultimately would reduce their principal balance to 0.

B. *The Non-Permitted Contingency Existed Pursuant to the Terms of The Obligations For an Independent Reason: The Restructuring Terms Became Part of the SUNs Terms*

But even if the DC were to ignore that the contingency was within the scope of the existing *indenture* (as the Panel found), the reduction could occur "pursuant to the terms of the obligation[s]" for an additional and independent reason: the Panel found that *all* noteholders were bound as of 29 September 2025, and so it follows that those binding obligations necessarily became part of the "terms" of the SUNs. Put another way, the "terms of the obligation" now included the transaction that had been agreed to in the TSA, to which all noteholders were bound. Those "terms" therefore governed, and followed with, the SUNs.

The Milbank Brief (¶¶ 29.2 & 29.3) argues that a mandatory exchange "cannot be said to be an exchange 'pursuant to the terms of the obligation'" because it is an "exchange pursuant to separate terms under a separate document." But it follows from the Decision that the TSA had essentially become part and parcel of the notes themselves—not a "separate" set of terms. Indeed, the Panel expressly stated there was "no reason why it would be necessary to wait for the already pre-agreed Consent Solicitation process to follow its course, **let alone for the formal amendment of the indentures**, before finding an agreement which binds all noteholders."[16] As explained below, it would be absurd—and elevate form over substance—if the SUNs are deemed to have Outstanding Principal Balance merely because those binding terms had not been inserted into the indentures.

Regardless, Section 3.8(a) does not say that the "terms of the obligation" include only the contractual terms contained in the instrument that governs the obligation, ignoring "separate document[s]." To the contrary, Section 3.8(a) necessarily requires an examination of other documents. Consider, for example, a guarantee. One would need to evaluate the terms of the underlying obligation, in a separate document, to calculate its Outstanding Principal Balance including consideration of any non-Permitted Contingencies.

Consider, as a further example, a scheme of arrangement, which would involve a court order sanctioning an agreement (in a separate document to a bond indenture) between the reference entity and holders of an obligation. The entry of the court order would be a Restructuring Credit Event because upon court approval the scheme would bind all holders of the obligation. Yet the Milbank Brief's interpretation would ignore the sanction order for purposes of analyzing the Outstanding Principal Balance, because in its view such terms are relevant *only* once the parties

[15] See also Black's Law Dictionary (12th ed.) (defining "pursuant to" to mean "[i]n compliance with; in accordance with; under").

[16] Decision ¶ 26 (emphasis added).

take the formalistic step of amending the indenture[17] (which may occur immediately after the sanction order, or some time after, or not at all). This cannot be right.

Had the drafters intended for the provision to be interpreted in such cramped fashion (i.e., referring only to the terms included in the four corners of the instrument governing the obligation) they would have said so. Instead, they used the generic and undefined word "terms." And other provisions in the Definition make clear that the drafters understood that the "terms" of a contract could be spread across multiple documents. For example, Section 1.2 defines "Confirmation" to mean "with respect to a Credit Derivative Transaction, one or more documents and other confirming evidence exchanged between the parties or otherwise effective **which, taken together**, confirm or evidence all of the **terms of** that Credit Derivative Transaction." (emphasis added).

C. *The Contingency is Not "Permitted" As It Was No Longer In Control of Holders*

While Section 3.8(a)(ii) contains certain exceptions, none are applicable:

- This is not a "payment"—it was a forced exchange into equity of a new entity.

- And, as above, it is not a Permitted Contingency: it is not the "result of the application of" any of the provisions identified in Section 3.11(a) and it is not (as applicable to Section 3.11(b)) "within the control of the holders of the obligation or a third party acting on their behalf (such as an agent or trustee) in exercising their rights under or in respect of such obligation."

Indeed, the Panel's decision makes clear that the contingency was *not* within the control of the holders as of the date of the Restructuring Credit Event (7 October). It concluded that the Company was **"obligat[ed] . . . to implement the Consensual Solution"** and the consenting noteholders were **"obligat[ed] . . . affirmatively to participate in any Consent Solicitations by giving the necessary consents"** and so there was "no reason why it would be necessary to wait for the already pre-agreed Consent Solicitation process to follow its course, let alone for the formal amendment of the indentures, before finding an agreement which binds all noteholders."[18]

Put another way, as of 29 September, anyone acquiring the notes would own a security that had, as a result of this binding "agreement," morphed into something other than an obligation for the repayment of money, conditioned upon the closing of the transaction. From that point on the SUNs holders and anyone acquiring SUNs in the open market were subject to a binding contingency (over which neither they nor any other holder had any control) that would cause the

[17] See Milbank Brief ¶ 30 ("In this case, the 29 September 2025 press announcement states that the amendments would be implemented by the issue of supplemental indentures on the Settlement Date of the Recapitalisation Transaction, which was 12 November 2025. Therefore, on all days prior to the Settlement Date, the terms of the obligation did not provide that the SUNs would eventually be equitized.").

[18] Decision ¶ 26 (emphasis added).

outstanding principal balance owed under the SUNs to be reduced to 0 (via equitization) as long as the closing of the transaction occurred (which in fact it did).

D. *A Finding of No Outstanding Principal Balance is Consistent with the Intent of Section 3.8*

Finally, a finding of 0 Outstanding Principal Balance is also consistent with the intent of Section 3.8. It reduces the Outstanding Principal Balance by these amounts "to protect the Seller against the risk of being unable to assert a claim against the Reference Entity that is equal to the amount it has had to pay to the Buyer."[19] That risk was present here as of 29 September: the Panel concluded that the TSA *"obligat[ed]"* the noteholders to support, and the Company to implement, the equitization transaction.

II. A Finding that the SUNs Had Outstanding Principal Balance Would Be At Odds With The Panel's Decision and Lead to Arbitrary and Absurd Results

A finding that the SUNs had Outstanding Principal Balance would not only be inconsistent with the Panel's decision: it would also lead to absurd and arbitrary results. For example, a note with an issuer call option would have its balance reduced to reflect the possibility of the issuer exercising that option, however remote the possibility that the option would be exercised.[20] Yet an obligation for which holders were *already bound* to an equitization event would *not* be subject to reduction, even though any claim in respect of such obligation was due to be extinguished.

The position advanced against a finding of 0 Outstanding Principal Balance would also elevate form over substance. For example, it could lead to two wildly divergent outcomes depending on whether the obligations were immediately equitized in the Restructuring (in which case the obligations would not be deliverable) or not (in which case such obligations would be deliverable). And that would be the case even if the transactions were otherwise identical in substance, the equitization was a certainty, and the only difference in form was a single day between the agreement to the Restructuring event and the implementation of the transaction.

The same is true of the Milbank Brief's argument that the DC must ignore any documents beyond the indentures themselves, even when equally binding on holders. It would seem to be common ground that if the indenture had been formally amended to contain this contingency, binding on all holders, it would necessitate a reduction in Outstanding Principal Balance. Yet on the Milbank Brief's view this would lead to a different result merely because such an

[19] *Firth on Derivative Law and Practice* § 17-97.

[20] See, for example, the final list of deliverable obligations for the 2013 auction relating to Bankia, S.A. (Issue No. 2013042401), available at https://www.cdsdeterminationscommittees.org/documents/2013/05/final_list.pdf/. The DC determined that one bond should be "treated as having an outstanding principal balance of 97.90% of its face value" because the bond "contains an Issuer call option which, if exercised at its earliest opportunity (on 27 July 2013), would allow the Bond to be redeemed at 97.90% of its face value."

agreement—again, equally binding on all holders—had been memorialized on a separate piece of paper. That overly formalistic view is both atextual and illogical and should be rejected.

III. Finding Otherwise Would Effectively Facilitate the Implementation of an Impermissible Asset Package Delivery Approach for Standard Corporate CDS

The 2014 Definitions deliberately excluded standard corporate CDS from the asset-package delivery mechanism applicable to financial corporate and sovereign CDS. This was because, among other reasons, it would "magnif[y]" the risk of moral hazard.[21] Namely, in the corporate context a holder may have the ability to "influence a reference entity's restructuring decision and take advantage of settlement through asset package delivery."[22]

Because it was agreed that the SUNs were to be equitized, a finding that the SUNs had Outstanding Principal Balance would undermine this carefully crafted regime and introduce the very moral hazard risk that the Definitions sought to avoid. One consequence of the Panel's decision is that a Restructuring Credit Event can occur before the implementation of the subject transaction; thus, an obligation could technically survive a Restructuring Credit Event even though agreement to reduce the principal balance to 0 via equitization was the pre-agreed and constituted trigger for the Restructuring. If the DC holds that the SUNs have an Outstanding Principal Balance of greater than 0, and such obligations are therefore Deliverable Obligations merely due to that interim period prior to the actual equitization, it would open the door to precisely the type of manipulation that motivated the decision to omit standard corporate CDS from asset-package delivery in the first place: the ability of a holder to influence the restructuring and settle based on what would amount to an asset-package delivery, since any future holder of the obligation will be *bound* (per the Panel's decision) to a transaction that eliminates the obligation in favor of the assets to be delivered.

Equitization has always been a risk that protection buyers were taking in the CDS market, and market participants have traded Ardagh CDS fully aware of those features and risks—so finding no Outstanding Principal Balance will not deprive CDS buyers the benefit of their bargain. We note that, tellingly, we have found no instance where a CDS contract triggered by a Restructuring Credit Event settled on the basis of pre-Restructuring obligations since the DC became in charge of making credit event and settlement determinations in the CDS market.[23] The Definitions should thus not be unduly stretched or construed expansively to change the product's clear and known features, fully accounted for by eligible market participants at the

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[21] Indra Rajaratnam, *Credit Default Swaps: The Vanilla Essence* (Risk Books 2022)

[22] *Id.*

[23] The question of whether adjustments should be made to the Auction Settlement Terms under Rule 3.2(d) to allow the delivery of the equity interests in respect of the SUNs is beyond the scope of the question presented and so we do not address it. However, as certain ISDA members have already offered their views on this subject in connection with the External Review, we merely note here, for the sake of completeness, that none of the situations identified in Paragraphs 36 and 37 of the Milbank Brief involved a Restructuring Credit Event. They instead concerned Bankruptcy Credit Events and, in the case of *Steinhoff*, a Failure to Pay.

time of trading, especially where the above considerations were comprehensively considered at the time when the Definitions were most recently amended.