SUBMISSION TO EXTERNAL REVIEW PANEL ON DC ISSUES 2025100602, 2025102701, 2025102901 AND 2025110501

HAS A RESTRUCTURING CREDIT EVENT OCCURRED WITH RESPECT TO ARDAGH PACKAGING FINANCE PLC?

WRITTEN MATERIALS IN SUPPORT OF THE "NO" POSITION

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INTRODUCTION

1. This External Review is being carried out to answer the following question:

   "Has a Restructuring Credit Event occurred with respect to Ardagh Packaging Finance PLC?"

   The question is asked four times by reference to the factual position on 7 October 2025, 27 October 2025, 29 October 2025 and 5 November 2025 (the "**Relevant Dates**"). These are referred to as "**Question 1**", "**Question 2**", "**Question 3**" and "**Question 4**" respectively.[2]

2. It is submitted that the answer to each of these Questions is no, for the following reasons:

   a. There was no agreement to do any of the things listed in Section 4.7(a)(i) to (v) of the 2014 ISDA Credit Derivatives Definitions (the "**Definitions**")[3] until Ardagh Packaging Finance PLC ("**APF**") accepted the offers made by consenting holders of the SSNs and SUNs pursuant to the consent solicitation exercise. This could not have occurred before 28 October 2025, when Ardagh Group S.A. (together with its affiliates and subsidiaries, the "**Ardagh Group**") announced that the requisite thresholds had been met in respect of the SSNs and SUNs and probably did not occur until 12 November 2025.

   b. If, in the alternative, there was such an agreement before 12 November 2025, it was merely a conditional agreement and, therefore, until the conditions were satisfied or waived: (i) it did not bind any non-consenting holders and (ii) in any event, as a

[1] Linklaters LLP acts for Citadel Americas LLC, Citibank, N.A, Deutsche Bank AG, Goldman Sachs International, JP Morgan Chase Bank, N.A and Pacific Investment Management Company LLC and Kleinberg, Kaplan, Wolff & Cohen, P.C. ("KKW") acts for Elliott Investment Management L.P. ("Elliott"). For these purposes, Linklaters LLP does not have a client relationship with Elliott and KKW does not have a client relationship with the other members of the No group.

[2] As the Transaction Type (as defined in the Credit Derivatives Determinations Committees Rules (the "**DC Rules**")) is "Standard European Corporate", the questions are to be interpreted in accordance with English law (and without regard to the governing law of any transaction that incorporates the Definitions): DC Rules, Section 4.6(e).

[3] Terms defined (1) in the Definitions and (2) in the Statement of Agreed Facts in respect of the Reviewable Questions have the same meanings in this document.

conditional agreement, it fell outside Section 4.7 of the Definitions. The conditions were satisfied or waived on or immediately before 12 November 2025.

3. The External Review Panel (the "**Panel**") should not conclude that the answer to any of the Questions is yes unless it is satisfied, on the balance of probabilities, that the facts support that conclusion. The burden of proof is on those supporting the "Yes" position, i.e. those asserting that a Restructuring had occurred by the Relevant Date.

MATERIAL FACTS

4. As set out in the Statement of Agreed Facts, the Recapitalization Transaction[4] comprised three limbs: (a) the SSN Exchange, (b) the SUN Exchange and (c) the PIK Exchange.[5]

5. The TSA contemplated that the Recapitalization Transaction would be implemented as a whole. Hence, Section 4.2 of the TSA provides for all elements of the Recapitalization Transaction to be implemented on the "Recapitalization Transaction Effective Date" and the Term Sheet states that "*this Term Sheet is being provided as part of a comprehensive compromise and settlement, each element of which is consideration for the other elements and an integral aspect of the Recapitalization Transaction*".[6]

6. The Recapitalization Transaction, as it relates to the SSNs, the SUNs and the PIKs,[7] could have been implemented in one of three ways:

   a. First, a series of consent solicitations and/or exchange offers could have been used (the "**Consensual Process**"). It was in fact "*intended that the Recapitalization Transaction [would] be primarily implemented*" in this way.[8] However, this depended on the "Consensual Conditions" being satisfied,[9] namely "the SSN 90% Condition, SUN 90%

[4] First recital to the TSA (Agreed Facts Bundle page 63) and paragraph 3.1 of the Statement of Agreed Facts.

[5] Pages 4-5 of the Term Sheet (Agreed Facts Bundle page 157-158) and paragraph 3.2 of the Statement of Agreed Facts.

[6] Page 1 of the Term Sheet (Agreed Facts Bundle page 154).

[7] The Recapitalization Transaction also contemplates the issue of new first lien notes and a buy-out of Yeoman Capital S.A. but these elements are not material in the present context.

[8] Page 4 of the Term Sheet (Agreed Facts Bundle page 157).

[9] Section 7.1(u) (*Affirmative Commitments of the Company Parties*) of the TSA (Agreed Facts Bundle pages 97-98).

Condition and PIK 90% Condition", each as defined in the Term Sheet.[10] Meeting the "SSN Threshold", the "SUN Threshold" and the "PIK Threshold" was also one of the milestones set out in Section 4.1(b) of the TSA. The satisfaction of all three conditions was therefore required.

b. Secondly, if the Consensual Conditions were not satisfied, in certain circumstances, implementation could involve one or more schemes of arrangement.[11] Again, it is implicit from the Term Sheet, which states that "*[t]he Recapitalization Transaction contemplates (among other things) the key elements set out in parts A, B, C, D, E and F of this Term Sheet*", that the three limbs of the Recapitalization Transaction in respect of the SSNs, the SUNs and the PIKs would have to be implemented together even if one or two limbs proceeded via the Consensual Process and the third involved a scheme of arrangement or some alternative.

c. Thirdly, the TSA contemplated that implementation could occur through some form of "Alternative Implementation Planning", following consultation between the relevant parties.[12]

7. The September Announcement, which announced the launch of the SSN, SUN and PIK consent solicitations, confirms that the Ardagh Group was at that date pursuing the implementation of the Recapitalization Transaction via the Consensual Process. It also confirmed that the Recapitalization Transaction was to be implemented as a whole or not at all. It stated that the Recapitalization Transaction:

"*is subject to satisfaction or (as applicable) waiver of certain implementation conditions including, amongst others, receiving consents to the Proposed Amendments*

[10] Definition of "Consensual Conditions" in Section 1.1 (*Definitions*), Page 7 of the TSA (Agreed Facts Bundle page 67). The individual definitions are then set out more fully on pages 5 and 6 of the Term Sheet (Agreed Facts Bundle pages 158-159).

[11] Section 4.2 of the TSA (Agreed Facts Bundle page 84) and pages 7-9 of the Term Sheet (Agreed Facts Bundle pages 160-162).

[12] Page 9 of the Term Sheet (Agreed Facts Bundle page 162).

from Noteholders meeting the SSN 90% Condition, the SUN 90% Condition and either the PIK Notes 90% Condition or the PIK Notes 50% Condition".[13]

8. The "PIK Notes 50% Condition"[14] was obtaining consents from a majority in principal amount of the holders of the PIKs to, inter alia, certain amendments to the indentures governing the PIKs (defined as the "PIK Notes 50% Additional Consents" in the September Announcement).[15] For example, the governing law would be changed to English law.[16] The amendments would have facilitated a scheme of arrangement in respect of the PIKs. The statement in the September Announcement that "either the PIK Notes 90% Condition or the PIK Notes 50% Condition"[17] must be met does not mean that it was *only* necessary for the PIK Notes 50% Condition to be satisfied. It merely means that this was a necessary step in the implementation of the Recapitalization Transaction via a scheme of arrangement.

9. Such implementation was also subject to certain other conditions precedent. In addition to matters such as the payment of transaction expenses and the execution of Definitive Documents, they included:

   a. the expiry or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976;[18]

   b. obtaining the consent of the finance parties under an agreement (which is not publicly available) referred to as the Glass Africa CT;[19] and

   c. payment of the purchase price for the sale of Yeoman Capital S.A. (an indirect holding

[13] September Announcement (Agreed Facts Bundle page 36).

[14] This is defined in the September Announcement (Agreed Facts Bundle page 36).

[15] September Announcement (Agreed Facts Bundle page 36). In the TSA, they are defined as the "Proposed 50% Amendments" (Agreed Facts Bundle page 168).

[16] Pages 15-17 of the Term Sheet (Agreed Facts Bundle pages 168-170).

[17] September Announcement (Agreed Facts Bundle page 36).

[18] Section 17.1(c) (*Conditions Precedent to Closing Date*) of the TSA (Agreed Facts Bundle page 135). If a filing is required under this Act, whether there is a substantive issue that could delay or prohibit clearance depends on the identities of the issuer and the buyers of the relevant voting securities.

[19] Section 17.1(c) (*Conditions Precedent to Closing Date*) of the TSA (Agreed Facts Bundle page 135).

company of Ardagh Group S.A.) to a new holding company,[20] to be funded by the issue of new first lien notes.

10. The results to date of the consent solicitations were announced in the 28 October Announcement and the expiration time for the SSN and SUN consent solicitations was extended to 5pm New York time on 3 November 2025. This announcement stated that:

    "*Ardagh obtained the consents needed to implement the Transaction in respect of the Existing SSNs and the Existing SUNs on a consensual basis subject to the conditions described in the consent solicitation statement dated as of September 29, 2025 and as supplemented on October 12, 2025*" (emphasis added).[21]

    However, "*the PIK Notes 90% Threshold was not met*".[22] Although the 90% threshold for the SSNs and the SUNs had been reached, no announcement was made that APF had accepted the consents received to date pursuant to the SSN and SUN consent solicitations.

11. It also stated that, although certain amendments would be made to the indentures governing the SSNs and the SUNs, "*the provisions relating to the SSN Mandatory Transfer and the SUN Mandatory Transfer [would only become] effective on the Settlement Date*" and that an "*update on the expected Settlement Date for the Transaction*" would be provided in due course.[23] "Settlement Date" is not defined in that announcement but is defined in the TSA as the "Closing Date" which is defined as "*the date of the satisfaction (or waiver, if applicable) of the closing conditions […] and the consummation of the Recapitalization Transaction*".[24]

12. A further announcement was made on 4 November 2025. This made it clear that, although

[20] Section 17.1(e) (*Conditions Precedent to Closing Date*) of the TSA (Agreed Facts Bundle page 135).

[21] 28 October Announcement (Agreed Facts Bundle page 46).

[22] 28 October Announcement (Agreed Facts Bundle page 47).

[23] 28 October Announcement (Agreed Facts Bundle page 47).

[24] Definitions of "Closing Date" in Section 1.1 (*Definitions*), Page 6 of the TSA (Agreed Facts Bundle page 66) and "Settlement Date" on page 19 of the Term Sheet (Agreed Facts Bundle page 172).

APF had obtained the consents needed to implement the Recapitalization Transaction in respect of the SSNs and SUNs on a consensual basis, such implementation could not occur unless certain conditions were satisfied or waived. It stated that:

"*Ardagh expects the completion of the Transaction to occur promptly after the satisfaction or (as applicable) waiver of all Transaction Implementation Conditions and will announce the expected Settlement Date in due course*".[25]

"Settlement Date" is, again, not defined in the 4 November Announcement.

13. In the end, the impasse relating to the PIKs was broken by the entry into of an "Amicable Agreement" with "*the financial creditors and other stakeholders*" of members of the Ardagh Group, as announced in the First 12 November Announcement.[26] This included a private exchange of the PIKs, agreed by approximately 80% by value of the holders of the PIKs,[27] and the instigation of judicial reorganisation proceedings in Luxembourg and was a form of "Alternative Implementation Planning", as contemplated by the Term Sheet. An Amicable Agreement is an out of court agreement with creditors that, once agreed with those creditors, is subject to certification (*homologation*) by the Luxembourg court. While the Amicable Agreement is binding as between the creditors and the company from the date of execution, the homologation means that it becomes directly enforceable without requiring separate court proceedings and is generally filed with the court promptly after execution.

14. The Ardagh Group's intention to use an Alternative Implementation Planning mechanism for the PIKs had in fact been mentioned in the 28 October Announcement, which stated:

"*Since the PIK Notes 90% Threshold was not met, the PIK Notes 90% Proposed Amendments will not be implemented [...] The Existing PIK Issuer proposes to effect*

[25] 4 November Announcement (Agreed Facts Bundle page 51).

[26] First 12 November Announcement (Agreed Facts Bundle page 53)

[27] Second 12 November Announcement (Agreed Facts Bundle page 57).

the [Recapitalization Transaction] as it relates to the Existing PIK Notes through an Existing PIK Notes Alternative Implementation".[28]

15. The entry into of the Amicable Agreement removed the outstanding conditionality for the implementation of the Recapitalization Transaction. This may have been due to the satisfaction of any outstanding conditions and/or the waiver of such conditions. The First 12 November Announcement stated:

    "*In accordance with the terms of the [Recapitalization Transaction] and the Amicable Agreement, the settlement date of the [Recapitalization Transaction] is set for today and Ardagh expects its completion later in the day*" (emphasis added).[29]

16. A subsequent announcement on 12 November 2025 confirmed that the completion of each limb of the Recapitalization Transaction occurred on that date and that, in respect of the PIK Exchange, a judicial reorganisation proceeding in Luxembourg had been commenced by the PIK issuer.[30]

17. The following conclusions can be drawn about whether there was an agreement between APF and holders of the SSNs and the SUNs to implement the SSN Exchange and the SUN Exchange:

    a. The TSA was a framework agreement for the potential implementation of a recapitalization transaction but was not an agreement to effect the changes to the terms of the SSNs or the SUNs that would be required to implement the SSN Exchange and SUN Exchange.

    b. The parties to the TSA intended the Recapitalization Transaction to be implemented via an agreement entered into pursuant to the Consensual Process or, alternatively, via one or more schemes of arrangement or an alternative implementation mechanism.

[28] 28 October Announcement (Agreed Facts Bundle page 47).

[29] First 12 November Announcement (Agreed Facts Bundle page 53).

[30] Second 12 November Announcement (Agreed Facts Bundle pages 57-58).

Accordingly, the changes to the SUNs and the SSNs were not, and could not have been, implemented pursuant to the TSA itself.

c. The Ardagh Group sought to implement the SSN Exchange and the SUN Exchange under the Consensual Process via the SSN and SUN consent solicitations.

d. There is no evidence to suggest that the SSN and SUN consent solicitations were accepted until 12 November 2025 (or immediately prior thereto).

e. It follows that 12 November 2025 (or 11 November 2025) is the earliest date on which it can be said that there was an agreement between the consenting SUN and SSN noteholders and APF.

18. Certain other conclusions can also be drawn about the conditions that had to be satisfied for the Recapitalization Transaction to proceed, namely:

a. Each limb of the Recapitalization Transaction was conditional on the implementation of the other limbs, so that (unless otherwise agreed) the Recapitalization Transaction was to be implemented as a whole or not at all.

b. The Recapitalization Transaction was also subject to various other conditions, set out in the TSA and presumably also reflected in the consent solicitations.

c. It is clear from the fact that the 4 November Announcement stated that completion of the Transaction would occur "*promptly after the satisfaction or (as applicable) waiver of all Transaction Implementation Conditions*"[31] that such conditions had *not* been satisfied or waived by that date.

d. This is also clear from the inability of the Ardagh Group to announce a Settlement Date on 4 November. This date could not be fixed until all conditions had been satisfied or waived.

e. At a minimum, the unsatisfied conditions included the PIK 90% Condition or

[31] 4 November Announcement (Agreed Facts Bundle page 51)

implementation of the PIK Exchange via a scheme of arrangement or an alternative implementation mechanism. There is insufficient evidence to determine whether the other conditions had been satisfied or waived by 4 November 2025.

f. The conditions to the implementation of the Recapitalization Transaction were satisfied or waived at some time between the 4 November Announcement and the First 12 November Announcement.

g. It is an obvious inference that the conditions were satisfied or waived on, or immediately prior to, 12 November 2025, the date on which the Ardagh Group publicly announced the completion of the Recapitalization Transaction. Such an arrangement would indeed have been required by the rules of the New York Stock Exchange and the U.S. Securities and Exchange Commission.[32]

h. It follows that the conditions had not been satisfied by 5 November 2025. This conclusion is supported by the statement in the 4 November Announcement, set out in paragraph 12 above, which makes it clear that, on the previous day, the "Transaction Implementation Conditions" had not been satisfied.

i. It follows that, on each of the Relevant Dates, the Recapitalization Transaction was subject to conditions that remained unsatisfied.

PRINCIPLES OF INTERPRETATION

19. As Lord Clarke explained in *Rainy Sky SA v Kookmin Bank*:[33]

> "*the exercise of construction is essentially one unitary exercise in which the court must consider the language used and ascertain what a reasonable person, that is a person who has all the background knowledge which would reasonably have been*

[32] Ardagh Metal Packaging S.A., a subsidiary that is majority owned and controlled by Ardagh S.A., has shares listed on the New York Stock Exchange and so is subject to the rules of the New York Stock Exchange and the US Securities and Exchange Commission. Please refer to the Extracts of the Timely Disclosure of Material News Developments rule in the NYSE Listed Company Manual and the Securities and Exchange Commission Form 6-K Instructions (No Position Bundle pages 1-2).

[33] [2011] 1 WLR 2900 at page 2908 (Exhibit 2) (No Position Bundle page 3).

available to the parties in the situation in which they were at the time of the contract, would have understood the parties to have meant. In doing so, the court must have regard to all the relevant surrounding circumstances. If there are two possible constructions, the court is entitled to prefer the construction which is consistent with business common sense and to reject the other".

20. In *Re Lehman Brothers International (Europe) (No 8),*[34] Hildyard J observed that certain additional principles are relevant to the interpretation of ISDA Master Agreements "*having regard to their intended and actual use as standard agreements by parties with such different characteristics in a multiplicity of transactions in a plethora of circumstances*". This observation applies equally to the Definitions. The principles he identified were:

"*(1) It is 'axiomatic' that the ISDA Master Agreements should, 'as far as possible be interpreted in a way that achieves the objectives of clarity, certainty and predictability, so that the very large number of parties using it know where they stand': Lomas v JFB Firth Rixson at [53] per Briggs J.*

(2) Although the relevant background, so far as common to transactions of such a varied nature and reasonably expected to be common knowledge amongst those using the ISDA Master Agreements, is to be taken into account, a standard form is not context-specific and evidence of the particular factual background or matrix has a much more limited, if any, part to play: see AIB Group (UK) Ltd v Martin [2001] UKHL 63, [2002] 1 All ER (Comm) 209, [2002] 1 WLR 94.

(3) More than ever, the focus is ultimately on the words used, which should be taken to have been selected after considerable thought and with the benefit of the

[34] [2017] 2 All ER (Comm) 275 at [48] (Exhibit 3) (No Position Bundle page 37).

input and continuing review of users of the standard forms and of knowledge of the market: see Re Lehman Brothers International (Europe) (in admin) (No 6), Lehman Brothers International (Europe) v Lehman Brothers Finance SA [2013] EWCA Civ 188, [2014] 2 BCLC 451 (at [53] and [88]).

(4) The drafting of the ISDA Master Agreements is aimed at ensuring, among other things, that they are sufficiently flexible to operate among a range of users in an infinitely variable combination of different circumstances: Anthracite Rated Investments (Jersey) Ltd v Lehman Brothers Finance SA (in liq) [2011] EWHC 1822 (Ch), [2011] 2 Lloyd's Rep 538 (at [115]) per Briggs J: particular care is necessary not to adopt a restrictive or narrow construction which might make the form inflexible and inappropriate for parties who might commonly be expected to use it.

(5) That drafting is also aimed, to adopt what was said in an expert report submitted in a recent case (Lehman Brothers Holdings Inc v Intel Corp (16 September 2015, unreported), 'the Intel case') in the United States Bankruptcy Court for the Southern District of New York by one of the principal draftsmen of the 1992 ISDA Master Agreement (Professor Jeffrey Golden), at 'mitigating the risk of fact-specific disputes and the attendant risk of protracted litigation' by providing for the parties to have considerable latitude in the exercise of contractual rights subject to 'general terms of reasonableness and good faith'."

AGREEMENT THAT IS BINDING ON ALL HOLDERS

21. For there to be a Restructuring, one of the listed elements of Section 4.7(a)(i)(v) of the Definitions must be "*agreed between the Reference Entity … and a sufficient number of holders of the Obligation to bind all holders of the Obligation*". This requires a legally binding agreement; a non-binding agreement in principle would not be

sufficient.[35]

22. The TSA was merely an agreement to support certain proposed actions. It was not the agreement to implement the SSN Exchange or the SUN Exchange because:

    a. it merely set out three potential mechanisms that could be used to implement the SSN Exchange and the SUN Exchange; and

    b. such implementation was subject to the execution of Definitive Documents and the satisfaction of various other conditions.

23. Accordingly, none of the listed events was agreed by virtue of the signing of the TSA. Instead, the SSN Exchange and the SUN Exchange took effect by virtue of the agreements concluded pursuant to the consent solicitation exercise and the Amicable Agreement. In fact, the holders that were bound by the TSA and those participating in the consent solicitation were not identical, with 100% by value of certain of the series of SSNs and SUNs consenting to the Transaction but a lower percentage providing consent pursuant to the consent solicitations.[36]

24. The effect of the holder of an Obligation consenting to the proposals made by APF in the consent solicitation exercise depends on the terms of the consent solicitation memorandum, which is not publicly available.[37] However, the giving of such consent, in itself, is unlikely to have given rise to an agreement between APF and that holder. Instead, it is more likely that the consenting holders made contractual offers to APF, which were accepted by APF on or shortly before 12 November 2025, when the Ardagh Group announced the implementation of the Recapitalization Transaction. In any event,

[35] *Firth on Derivative Law and Practice*, para. 17.089 at footnote 1 (Exhibit 4) (No Position Bundle page 155).

[36] For example, the holders of 100.0% by value of the SSNs or SUNs issued under the "Existing 2020 SSN Indenture", the "Existing 2019 SUN Indenture" and the "Existing 2020 SUN Indenture" agreed the terms of the Recapitalization Transaction (see the September Announcement). By 4 November 2025 consents had been obtained in respect of only 99.6%, 99.9% and 99.1% by value of such SSNs or SUNs respectively.

[37] It was not available to the DC when it voted on the Questions and so could not be considered by the Panel even if its contents were known.

there is insufficient evidence to justify a conclusion that any of the listed events were agreed between APF and the consenting holders before 12 November 2025 (or immediately prior thereto). Consequently, there was no agreement between the holders and APF for the purposes of Section 4.7(a) of the Definitions prior to that time.

25. If, contrary to the conclusion reached in paragraph 24 above, the Panel considers that there *was* such an agreement prior to 12 November 2025, consents pursuant to the consent solicitations were received from only some of the holders and the process was only effective in respect of the non-consenting holders once certain conditions were satisfied. Although the percentage of consents received for the SSNs and SUNs passed the 90% threshold required to amend the terms of the SSN and SUN indentures without the consent of the non-consenting noteholders,[38] that agreement did not "bind all holders", as required by Section 4.7(a), unless and until those conditions were satisfied, which did not happen until 12 November 2025 (or immediately prior thereto). Although the consenting holders could be said to be (conditionally) bound by the agreement, the non-consenting holders were not bound at all unless the conditions were satisfied. Until then, the minority's rights and obligations under the SSNs and SUNs were not affected.

26. It follows that because (a) none of the events listed in Section 4.7 of the Definitions had been agreed by any of the Relevant Dates or, in the alternative, (b) any such agreement was not binding on non-consenting holders of the SSNs and SUNs on any of the Relevant Dates, no Restructuring had occurred by any of the Relevant Dates.

CONDITIONAL AGREEMENTS AND RESTRUCTURING

27. Under a credit default swap (a "**CDS**"), the credit risk associated with the Reference Entity is transferred from the Buyer to the Seller. This is because settlement of the CDS

[38] See paragraph 1.4 of the Statement of Agreed Facts as to the 90% consent requirement in the SSN and SUN indentures.

may be required following the occurrence of a Credit Event. The Credit Events identify circumstances in which the Reference Entity's Obligations (or, in the case of the Bankruptcy Credit Event, the Reference Entity itself) are sufficiently credit-impaired as to trigger a transfer of value from the Seller to the Buyer.

28. As noted above, the events falling within the scope of the Restructuring Credit Event all involve some form of concession that is given by, or imposed on, the holders of an Obligation in the context of a deterioration in the Reference Entity's creditworthiness or financial condition.

29. Section 4.7(a) of the Definitions recognises that the concession may be given by an agreement with the Reference Entity, or may be imposed by the Reference Entity or a Governmental Authority (via an announcement or decree), and will constitute a Credit Event even if the completion date is in the future. However, any agreement, announcement or decree must be such that the event *will* occur. If it can only be said that the event *may* occur because the agreement, announcement or decree takes effect only in certain circumstances, the holders of the Obligation will not have given anything up unless and until those circumstances come about.

30. If conditional agreements constituted a Restructuring (where the requirements of Section 4.7 are otherwise satisfied), regardless of the conditionality, this would mean that there could be a Credit Event even if none of the events listed in Section 4.7(a)(i) to (v) eventually occur and even if it is clear from the outset that they are unlikely to occur. This would be a very counter-intuitive conclusion.

31. If there could be a Credit Event where none of the listed events might occur (or where there is significant uncertainty about this), the economics of a CDS, and hence its commercial objective, could be undermined. As a general rule, the Reference Entity's Deliverable Obligations will not fully "price in" (i.e. reflect) the event until it becomes

certain that it will happen. The settlement of the CDS (which would bring the credit protection to an end) could therefore result in a payout to the Buyer which is potentially much lower than it would be once it becomes known that the restructuring will be going ahead. It would therefore not reflect the "true" value of the impact of the restructuring.

32. This approach would introduce a "potential" restructuring as a Credit Event into the Definitions. There is no equivalent "potential" Credit Event in the Definitions. The other Credit Events, such as Failure to Pay and Bankruptcy,[39] are tested by reference to events that are certain and ascertainable and leave no room for a forward-looking assessment as to what may happen if other events occur.

33. The No group recognises that conditions which are merely administrative or procedural, or are otherwise a mere formality, and therefore have no bearing on whether the restructuring will go ahead, may be disregarded. This is consistent with the approach adopted by the DC in the past. For example, in 2020, the DC decided that a Restructuring had occurred in respect of Ecuador[40] even though the changes that were to be implemented via a consent solicitation would only be effective once a "consent payment" was made by the issuer.[41] A Restructuring was held to have occurred when the issuer accepted the consents provided by consenting noteholders. However, this consent payment was in the sole control of the issuer and is thus not the type of condition in question in the present case.

CONSEQUENCES FOR SETTLEMENT OF A CDS

34. It is understood that some members of the Yes group take the view that, if a restructuring agreement must be unconditional (apart from any conditions of a type referred to in

[39] The Definitions also include Governmental Intervention, Repudiation/Moratorium, Obligation Acceleration and Obligation Default. However, for a Standard European Corporate, only Failure to Pay, Bankruptcy and Restructuring apply as standard.

[40] DC Decision in respect of Issue 2020042001 (Republic of Ecuador) (Exhibit 5) (No Position Bundle pages 156-157).

[41] Press announcement: The Republic of Ecuador Announces Successful Results of its Consent Solicitation (Exhibit 6) (No Position Bundle page 160).

paragraph 33 above), there will generally be only a short interval between the Restructuring and the time at which it is implemented. By the time an Auction is held to determine the settlement amount that is payable,[42] the Reference Entity may no longer have any Deliverable Obligations. This point can be addressed as follows:

a. First, although the interval in the present case was very short, this will not necessarily be true in all cases.

b. Secondly, a restructuring might not extend to all the Reference Entity's Deliverable Obligations. Others may continue to exist and may be included in an Auction.

c. Thirdly, the possibility of a Reference Entity's Deliverable Obligations ceasing to exist as part of a Restructuring was well known when the Definitions were drafted. The point was addressed, in the case of Sovereign Reference Entities and those to which the "Financial Reference Entity Terms" apply,[43] by the "Sovereign Restructured Deliverable Obligation" concept and a set of "Asset Package Delivery" provisions.[44] These permit assets into which certain obligations have been converted to be used for settlement purposes in lieu of the original obligation. When the Definitions were drafted, a decision was made *not* to extend the provisions to corporate Reference Entities, driven the moral hazard concern that bondholders with CDS protection might have an incentive to accept unfavourable restructuring terms knowing they had protection and could deliver the resulting package to the Seller. It therefore cannot be right to regard the possibility of the Reference Entity no longer having any Deliverable Obligations as unexpected or representing an uncommercial

[42] Such an Auction is designed to assess the lowest market value of the Reference Entity's "Deliverable Obligations" (i.e. those with certain defined characteristics). The settlement amount payable under a credit default swap is typically based on the difference between the par value and the market value of the Deliverable Obligations in question.

[43] Section 8.9 of the Definitions.

[44] Sections 3.2(c) and (d), 3.3-3.5 and 8.4–8.9 of the Definitions. See *Firth on Derivatives Law and Practice*, para.17.162 (Exhibit 7) (No Position Bundle pages 164-166).

result.

d. Fourthly, the DC has a discretion to permit the assets into which restructured obligations have been converted to be included in an Auction, in a manner that is analogous to the Asset Package Delivery provisions, and has indeed exercised this discretion in the past.[45] The DC will not necessarily adopt the same approach in all cases (particularly where, in light of the point made in (c) above, it regards the exclusion of the restructured obligations, and anything into which they have been converted, as a proper result) but that is a matter for the DC.

AN INTERMEDIATE APPROACH?

35. It is understood that some members of the Yes group consider that there is an intermediate approach, which would involve the DC (and, hence, the Panel) assessing the likelihood of any conditions being satisfied. On this basis, a conditional restructuring agreement may fall within Section 4.7 of the Definitions if it can be said, with a given degree of certainty, that the conditions will be satisfied or waived.

36. The No group rejects this interpretation for the following reasons.

a. First, it is difficult to see how any test requiring an assessment of the likelihood of conditions being satisfied could be articulated with any precision. Furthermore, even if such a test could be formulated, it would be difficult to apply. Such an approach would be inconsistent with the principle that ISDA documentation should "*as far as possible be interpreted in a way that achieves the objectives of clarity, certainty and predictability, so that the very large number of parties using it know where they stand*".

[45] See the EMEA DC Meeting Statement dated 8 April 2019 in respect of Steinhoff Europe AG (Exhibit 8) (No Position Bundle pages 167-169) and the explanatory statement accompanying the 2019 Steinhoff Europe AG Credit Derivatives Auction Settlement Terms (Exhibit 9) (No Position Bundle pages 170-173).

b. Secondly, often, the DC will not be in a position to make assessments of this nature. Its determinations must be made on the basis of information that is either public or can be published on the DC website.[46] While the Reference Entity may make various announcements about (for example) a consent solicitation exercise, there may be little information about the nature of any conditions and how likely they are to be satisfied. The Ardagh Group's consent solicitation is a case in point. While it was publicly known that the required threshold had not been met in respect of the PIKs, very little information was available about what the Ardagh Group was doing to try to address this. Without such information, any attempt to assess the likelihood of the conditions being satisfied would be little more than a matter of guesswork.

   This is particularly the case where reliance is placed on an agreement under which certain creditors undertake to support a proposed restructuring. Although in the present case, the TSA was publicly available, this is relatively unusual. In most cases, the DC will have little information about what conditions exist and how likely they are to be fulfilled.

   Another example would be a restructuring of a Reference Entity's Obligations via a scheme of arrangement. This would require the consent of at least 75 per cent in value of the creditors (or class of creditors) to the proposed compromise or arrangement and the sanction of the court.[47] The court's power to sanction a scheme is extensive and far from simply being a "*rubber-stamp that approves the wishes of the majority as expressed at the court meeting*".[48] A DC would not be in a

[46] DC Rules, Section 2.5(b).

[47] Section 899 of the Companies Act 2006.

[48] *Re Link Fund Solutions Limited* [2024] EWHC 250 (Ch), [20] (Exhibit 10) (No Position Bundle page 179).

position to assess the likelihood of the scheme being sanctioned, even if details of the scheme were available.

c. Thirdly, in certain circumstances,[49] the settlement of a CDS will be triggered not by a DC decision that a Credit Event has occurred but by one party giving the other a "Credit Event Notice" specifying the alleged Credit Event together with a "Notice of Publicly Available Information" that cites evidence in support of the assertion.[50] In such circumstances, the assessment of the evidence will be made by the parties themselves. Such an assessment needs to be made before settlement of the transaction becomes due.[51] If the existence of a Credit Event is based on a test that is uncertain or difficult to apply, there is likely to be a dispute which is difficult to resolve before the putative settlement date. A party that declines to settle runs the risk that, if it turns out to be wrong, it will be in breach of contract. The other party might also seek to close out all the outstanding transactions under the relevant ISDA Master Agreement on the basis that an Event of Default has occurred.

37. The No group's approach would not give rise to such problems. The test is clear and no judgment about the degree of conditionality involved is required. Furthermore, confirmation that the Reference Entity has reached an unconditional agreement with its creditors is likely to become publicly available soon afterwards and an assessment based on imperfect information will not be required.

REJECTION OF AN INTERMEDIATE APPROACH BY THE DC

38. The DC has previously rejected such an intermediate approach. In August 2022, it was

[49] A DC may not be asked to decide the question, or it may elect not to consider it (for example, if the number of transactions that reference the Reference Entity in question is limited).

[50] Sections 14.1–14.2 of the Definitions.

[51] i.e. the Physical Settlement Date: Section 8.18 of the Definitions.

asked whether a Restructuring had occurred in respect of Ukraine[52] as a result of modifications to certain bonds pursuant to a consent solicitation. The modifications were subject to various conditions, including obtaining governmental approvals, obtaining consent to the modification of certain other securities and the execution of the "Amendment Documents". The DC concluded that each condition had been satisfied and that a Restructuring Credit Event had therefore occurred.[53]

39. Similarly, in 2016, the DC concluded that a Restructuring occurred in respect of Norske Skogindustrier ASA[54] pursuant to an exchange offer and consent solicitation. In that case, an agreement to amend the terms of the notes was binding on 6 April 2016 but became effective only when an extraordinary resolution was passed and there was a "Settlement Date" (which occurred on 11 April 2016 and 12 April 2016 respectively). The DC held that the Restructuring occurred on 12 April 2016 as this was the date on which the outstanding conditions were satisfied.[55]

40. In 2017, the DC also concluded that a Restructuring had occurred in respect of Novo Banco S.A.[56] "*as a result of the announcement by Novo Banco S.A. on 4 October 2017 that (i) the conditions set out in the Tender Offer and Solicitation Memorandum dated 24 July 2017 and the Portuguese Offer Memorandum dated 24 July 2017 had been met*."[57]

41. In 2011, the DC determined that a Restructuring[58] had occurred in respect of Victor

[52] DC Decision in respect of DC Issue Number 2022081501 (Ukraine) (Exhibit 11) (No Position Bundle pages 203-205).

[53] EMEA DC Meeting Statement of 19 August 2022 in respect of Ukraine (Exhibit 12) (No Position Bundle pages 206-209).

[54] DC Decision in respect of DC Issue Number 2016041401 (Norske Skogindustrier ASA) (Exhibit 13) (No Position Bundle pages 210-211).

[55] DC Meeting Statement of 22 April 2016 in respect of Norske Skogindustrier ASA (Exhibit 14) (No Position Bundle page 212).

[56] DC Decision in respect of DC Issue Number 2017100401 (Novo Banco S.A.) (Exhibit 15) (No Position Bundle pages 213-214).

[57] Extract from the DC page relating to DC Issue Number 2017100401 on Novo Banco S.A. (Exhibit 16) (No Position Bundle pages 215-216).

[58] This DC determination was made under the 2003 ISDA Credit Derivatives Definitions, as supplemented. The parts of the definition of Restructuring that are under consideration pursuant to this External Review are the same in the 2003 ISDA Credit Derivatives Definitions as in the 2014 ISDA Credit Derivatives Definitions. See the extract of Section 4.7(a) of the 2003 ISDA Credit Derivatives Definitions (Exhibit 17) (No Position Bundle pages 217-219).

Company of Japan.[59] Despite the modification of the terms of a bond having been approved by the bondholder's resolution on 8 August 2011, the Credit Event was found to have occurred on 25 August 2011, when the modification became effective upon satisfaction of the condition that the parent company had not resolved to cancel a certain issue of stock acquisition rights.

42. Finally, on 11 August 2025, the DC was asked whether a Restructuring has occurred in respect of APF, and, by a majority of 10 votes to 1, decided that the answer was no.[60] This was because, inter alia, the Recapitalization Transaction contemplated by the TSA was conditional on "*achieving support from 90% of the holders of the different SSNs, SUNs and PIKs issued under each relevant indenture*" and "*the 90% threshold [had not been] met in respect of the PIKs*". Implementation of the Recapitalization Transaction was "*also contingent on satisfying the conditions precedent that are contained in the TSA and any further conditions precedent that may be included in the long form transaction documents*".

43. It follows that the DC's consistent approach has been that a restructuring falls outside Section 4.7 of the Definitions if it is subject to the satisfaction of any conditions (other than as described in paragraph 33 above).

ASSESSMENT OF THE CONDITIONALITY

44. If, contrary to No group's position, the Panel concludes (1) that an agreement existed between APF and the consenting SSN and SUN holders some time prior to 12 November 2025 and (2) that an agreement can fall within the scope of Section 4.7 of the Definitions even if it is subject to conditions which are more than procedural or

[59] DC Decision in respect of Issue No. 2011082501 (Victor Company of Japan) and extract from the DC page for Issue No. 2011082501 (Exhibit 18) (No Position Bundle pages 220-224).

[60] DC Meeting Statement dated 14 August 2025 (Ardagh Packaging Finance plc) (Exhibit 19) (No Position Bundle pages 225-226).

administrative requirements or other formalities, then, unless it decides that *any* type of condition is permissible, it will need to assess the conditionality on each of the Relevant Dates. This must be done by reference to the evidence available.

45. By 7 October 2025 (the Relevant Date for Question 1), the consent solicitation exercise had started but its implementation depended on obtaining consents from at least 90% by value of the holders of the PIKs (or, alternatively, the sanctioning of a scheme of arrangement or some form of Alternative Implementation Planning). There was material uncertainty about whether this would be achieved. Indeed, the 90% threshold was not passed and alternative arrangements had to be made.

46. The position on 27 October 2025 (the Relevant Date for Question 2) was no different. A 50% threshold had been passed in relation to the PIKs but not the required 90% threshold.

47. On 29 October 2025 (the Relevant Date for Question 3), there was still a material degree of uncertainty about whether the Recapitalization Transaction would proceed. The consent solicitation process in respect of the PIKs had failed and so the Recapitalization Transaction could only proceed via a scheme of arrangement in respect of the PIKs or Alternative Implementation Planning. Although consents had been obtained from the holders of approximately 82.0% by value of the PIKs, it cannot be concluded from this that a scheme of arrangement (where the threshold would be 75% in value of the creditors or class of creditors in question) would have been successfully promoted. In particular, it cannot be assumed that those assenting under the consent solicitation exercise would have voted in favour of a hypothetical scheme of arrangement; nor can it be assumed that such a scheme would have been sanctioned by the court. Not only is there a lack of evidence as to these matters, no assessment could be made without information about the terms of such a scheme.

48. In any event, a scheme of arrangement was *not* proposed and the Ardagh Group embarked on Alternative Implementation Planning. There must have been a material degree of uncertainty on 29 October 2025 about whether this would have been successful. There is certainly no evidence to suggest the contrary.

49. For the reasons set out in paragraph 18 above, it is clear that, on 5 November 2025 (the Relevant Date for Question 4), the Alternative Implementation Planning had not been concluded, i.e. the Amicable Agreement had not been entered into.

50. Again, therefore, the Recapitalization Agreement remained subject to material unfulfilled conditions. Putting matters at their strongest, the best the Yes group could say is that there had been discussions with the non-consenting PIK holders at this point and that the Ardagh Group was confident that the Amicable Agreement would eventually be concluded. However, this would be a matter of speculation. It is not a conclusion that can be reached on the evidence. In any event, there is a significant difference between providing support in principle to a proposed agreement and the entry into of the agreement itself. Until the Amicable Agreement was actually entered into, the Recapitalization Transaction remained subject to a material unsatisfied condition.

51. For the reasons set out in paragraph 18.f it can be inferred from the First 12 November Announcement, and from the date on which the Amicable Agreement was filed with the Luxembourg court, that the Amicable Agreement must have been entered into on or very shortly prior to 12 November 2025.

CONCLUSIONS

52. **Question 1**: No Restructuring Credit Event occurred on or before 7 October 2025 because by that date:

    a. no agreement between APF and the holders of the SSNs or the SUNs to postpone

the maturity of the SSNs or reduce the principal of the SUNs had been entered into. The TSA did not constitute such an agreement, and the consent solicitations had not been accepted by APF by that date; and

b. the implementation of the Recapitalization Transaction was, in any event, subject to the satisfaction or waiver of various conditions, including the implementation of the PIK Exchange.

53. **Question 2**: No Restructuring Credit Event occurred on or before 28 October 2025 because, by that date:

a. the expiration time for the SSN and SUN consent solicitations had not yet occurred. There was no agreement between APF and the holders of the SSNs or the SUNs to any of the events listed in Section 4.7(a) of the Definitions; and

b. in any event, the implementation of the Recapitalization Transaction was subject to the satisfaction or waiver of various conditions, including the implementation of the PIK Exchange.

54. **Question 3**: No Restructuring Credit Event occurred on or before 29 October 2025 because, by that date:

a. there is no evidence that the consent solicitations had been accepted by APF and so there continued to be no agreement between APF and the holders of the SSNs and the SUNs to any of the events of Section 4.7(a) of the Definitions; and

b. in the alternative, as the PIK 90% condition had not been satisfied and an alternative implementation mechanism for the PIKs had not been agreed, any agreement between the holders of the SSNs and the SUNs and APF was subject to an unsatisfied condition and so was (1) outside of Section 4.7 of the Definitions and (2) not binding on the non-consenting holders.

55. **Question 4**: no Restructuring Credit Event occurred on or before 5 November 2025

because, by that date:

a. for the reasons set out in paragraph 54.a, there was no agreement between APF and the holders of the SSNs or the SUNs within the meaning of Section 4.7(a); and

b. in the alternative, for the reasons as set out in paragraph 54.b, that agreement fell outside Section 4.7 of the Definitions and was not binding on the non-consenting holders.

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2 December 2025

EXHIBITS

1. Extracts of the Timely Disclosure of Material News Developments rule in the NYSE Listed Company Manual and the Securities and Exchange Commission Form 6-K Instructions
2. *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900
3. *Re Lehman Brothers International (Europe) (No 8)* [2017] 2 All ER (Comm) 275
4. *Firth on Derivatives Law and Practice*, para.17.089
5. DC Decision in respect of DC Issue 2020042001 (Republic of Ecuador)
6. Press announcement: The Republic of Ecuador Announces Successful Results of its Consent Solicitation
7. *Firth on Derivatives Law and Practice*, para.17.162
8. EMEA DC Meeting Statement dated 8 April 2019 in respect of Steinhoff Europe AG
9. Explanatory statement accompanying the 2019 Steinhoff Europe AG Credit Derivatives Auction Settlement Terms
10. *Re Link Fund Solutions Limited* [2024] EWHC 250 (Ch), [20]
11. DC Decision in respect of DC Issue Number 2022081501 (Ukraine)
12. EMEA DC Meeting Statement of 19 August 2022 in respect of Ukraine
13. DC Decision in respect of DC Issue Number 2016041401 (Norske Skogindustrier ASA)
14. DC Meeting Statement of 22 April 2016 in respect of Norske Skogindustrier ASA
15. DC Decision in respect of DC Issue Number 2017100401 (Novo Banco S.A.)
16. Extract from the DC page relating to DC Issue Number 2017100401 on Novo Banco S.A.
17. Extract of Section 4.7(a) of the 2003 ISDA Credit Derivatives Definitions.

18. DC Decision in respect of Issue No. 2011082501 (Victor Company of Japan) and extract from the DC page for Issue No. 2011082501
19. DC Meeting Statement dated 14 August 2025 (Ardagh Packaging Finance plc).