Ardagh Packaging Finance PLC | Issue Number 2025100602

On behalf of an Eligible Market Participant, Milbank LLP hereby responds to the Challenge Submission (the "**Challenge**") related to 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**") filed as of 30 December 2025:

- 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

Capitalized terms used but not defined herein have the meanings specified in the 2014 ISDA Credit Derivatives Definitions (the "**Definitions**"), the CDS Determinations Committee Rules (the "**DC Rules**"), or the brief Submitted by Milbank LLP in connection with the recently completed External Review related to Ardagh (the "**Milbank Brief**"), as applicable.

In our view, the Challenge should be rejected, because (a) its proposed interpretation of Section 3.8 of the Definitions is incorrect and unworkably muddy, and (b) the policy arguments it advances for not allowing the Auction to settle on the basis of the exchange consideration for the SUNs are misguided.

(A) The Proposed Interpretations are Incorrect and Unworkable

The Challenge argues that the Outstanding Principal Balance of the SUNs should be considered to have been reduced to zero because the eventual equitization called for in the Consent Solicitation means the principal amount could "be reduced as a result of the effluxion of time or the occurrence or non-occurrence of an event or circumstance".[1] Conceding – **as it must** – that such eventual events should not be considered to reduce the Outstanding Principal Balance unless they are "pursuant to the terms of the obligation(s),"[2] the Challenge then invents two reasons for construing the meaning of "terms of the obligation(s)" broadly:

1. Because collective action clauses are part of the terms of the obligation, all the amendments permitted under the terms of the TSA and Consent Solicitation should, ***prior to the date of implementation of amendments to the obligation to actually affect the agreements reached in the TSA and Consent Solicitation***, nevertheless be considered as part of the terms of the obligation; and
2. Because the External Review Panel considered more than one document (i.e., the TSA and Consent Solicitation) together to determine whether a Restructuring had occurred, the "terms of the obligation(s)" should, ***contrary to the plain language of Section 3.8(a)(ii) of the Definitions***, sweep in the TSA and Consent Solicitation.

[1] Definitions §§ 3.8(a)(ii).

[2] *Id*.

Both of these specious arguments intentionally blur the separate meaning and function of the definitions of Restructuring (Section 4.7) and Outstanding Principal Balance (Section 3.8). Indeed, the definition of Restructuring specifically calls upon one to consider agreements and announcements sufficient to bind all holders, whereas the definition of Outstanding Principal Balance requires one to look solely to the terms of the obligation. The **agreement** to support a transaction that will restructure the obligations and the **terms** of the obligations are two different things, and the provisions of the Definitions addressing whether a Restructuring Credit Event has occurred are different from, and serve a different purpose than, those relating to whether an obligation qualifies as a Deliverable Obligation. It therefore is not only reasonable, but necessary, for the DC to determine that (a) a binding agreement to restructure the SUNs was reached on 29 September 2025, BUT (b) the actual terms of the SUNs were not amended until Supplemental Indentures were actually executed on 12 November 2025.

The collective action clauses themselves do not reduce the Outstanding Principal Balance of the Obligations. Of course, such clauses are part of the terms of the Obligations at all relevant times. At the same time, it is the terms of **the Supplemental Indentures** that affect the Outstanding Principal Balance. Contrary to one of the assertions in the Challenge,[3] the fact that the restructuring arrangement was considered by the External Review Panel to be sufficient to bind the non-consenting holders because of the thresholds included in the collective action clauses does NOT mean that the Indentures were actually amended before the execution of Supplemental Indentures on 12 November 2025. Indeed, prior to 12 November 2025, holders of the obligations held a claim against the Reference Entity equal to the Outstanding Principal Balance of their notes as would have been acknowledged by a court in any insolvency proceeding or acceleration scenario.

The Definitions provide that, for purposes of determining the Outstanding Principal Balance of an obligation, the terms of the obligation must be considered to be those "in effect" as of the relevant date (being the NOPS Effective Date or the Valuation Date, as the case may be). In the interest of brevity, we incorporate herein by reference the portions of the Milbank Brief that address this point.[4] In summary, though, for the provisions of Section 3.8 fixing the time and scope for determining what should be considered as being "the terms of the obligation" to be given meaning, they cannot be read to include other documents such as the TSA and Consent Solicitation that do not actually alter the legal claim represented by the terms of the obligation as of the date on which such claims are being measured.[5]

[3] See text at footnote 11 in the Challenge.

[4] See Section C, especially paragraphs 29.1 through 29.6, beginning on page 17 of the Milbank Brief.

[5] The Challenge authors are similarly imprecise in citing (in footnote 20) the 2013 Bankia S.A. Credit Event, which included a bond that was treated as having an Outstanding Principal Balance of 97.90% of its face value due to an issuer call option, by suggesting that consistency with that result requires a determination that the SUNs have zero Outstanding Principal Balance. In that case, however, the issuer call option was exercisable "pursuant to the terms of" the relevant note, whereas the eventual equitization of the SUNs is not.

(B) The Product Policy Arguments are Misguided

The Challenge also asserts two further reasons on the grounds of product policy for not including the SUNs in the Final List and not amending the Auction Settlement Terms to permit Delivery of their exchange consideration in the Auction.

1. The Challenge asserts without evidence that Protection Buyers should have always understood that they assume the risk that they will not be compensated for Restructuring Credit Events if such event happens to be implemented in such a way that the restructuring agreement calls for the eventual equitization of the relevant Obligations.
2. The Challenge authors suggest that amending the Auction Settlement Terms to allow for delivery of the exchange consideration in the Auction will open the CDS contract to new forms of manipulation.

a. Obligations Bound to be Converted to Equity Have Been Included on Final Lists Before

Not only is there is no evidence that Protection Buyers should expect not to be compensated for Credit Events that happen to involve equitization, the actual history of the settlement of Credit Events by the DCs includes several examples of Credit Events in which debt obligations due to be converted to equity were nevertheless deliverable in CDS Auctions.[6] A similar outcome here therefore would not be an "arbitrary and absurd" result.

Talen Energy Supply, *Neiman Marcus* and *Frontier Communications Corporation* were cases brought in front of the US DC which determined that, with respect to each question, a bankruptcy credit event was found to have occurred following the execution of a restructuring support agreement. In each case, in connection with a chapter 11 filing, restructuring support agreements provided for the equitization of certain outstanding obligations. That the binding restructuring support agreements had contemplated the equitization of certain obligations did not preclude these same obligations from being included as Deliverable Obligations.

In *Talen Energy Supply*, the "Unsecured Notes Group", holders of certain senior unsecured notes, had agreed to equitize those senior unsecured notes held by their group.[7] The "Senior Unsecured Notes" which were subject to being equitized were defined as those unsecured notes issued under five separate indentures, collectively, the "Unsecured Notes Indentures".[8] Seven tranches of notes governed by the Unsecured Notes Indentures were specifically delineated in the restructuring support agreement and four of these seven tranches featured notes that were ultimately included in the final list of Deliverable Obligations.[9] Each Senior Unsecured Note

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[6] The authors of the Challenge ignore this precedent when they assert, on page 5 of the Challenge, that the DC should not permit the inclusion of obligations whose terms will "morph" into equity.

[7] Talen Energy Supply, LLC Restructuring Support Agreement (pp. 10 and12 of Restructuring Support Agreement).

[8] Talen Energy Supply, LLC Restructuring Support Agreement (p. 1 of Restructuring Support Agreement).

[9] Talen Energy Supply, LLC Restructuring Support Agreement (p. 41 of Restructuring Support Agreement); Microsoft Word - Americas DC Decision - Noble Corporation 08.12.20(2000558654.1) (see all Senior Unsecured Notes).

included as a Deliverable Obligation (which constituted seven out of the thirteen Deliverable Obligations) were ultimately equitized in connection with the restructuring.[10]

Neiman Marcus similarly featured equitization of outstanding notes in connection with its restructuring. According to the restructuring term sheet, holders of 2019 Term Loan Claims, 2013 Term Loan Claims, 2028 Debenture Claims, Second Lien Notes and Third Lien Notes were entitled to receive "New Equity", defined as "the equity interests in one of the reorganized Company Parties following the consummation of the Restructuring Transactions".[11] Second Lien Notes, defined as 14.0% Second Lien Notes due 2024, Third Lien Notes, defined as the 8.000% Third Lien Notes and 8.750% Third Lien Notes (each defined further as being due 2024), and 2028 Debenture Claims, defined as a claim on the 2028 Debentures (defined further as the 7.125 senior debentures due 2028) were all equitizable obligations and included in the final list of Deliverable Obligations.[12]

Lastly, *Frontier Communications Corporation* contemplated for the equitization of "Senior Notes" as part of its restructuring. The restructuring support agreement classified seventeen different tranches of notes as Senior Notes, the holders of which were to receive "New Common Stock", defined as the common equity of the reorganized company.[13] All seventeen tranches of notes which made up the Senior Notes were included on the final list of Deliverable Obligations.[14]

Isolux and *Atos* are comparable cases brought to the EMEA DC, where the final list of Deliverable Obligations included exclusively equitizable obligations. In *Isolux*, the company filed a moratorium in Dutch court which served as the trigger for the credit event. A chapter 15 filing was also made, in which a request was made on the court to convert debt held by "Bondholders" and affected by the refinancing agreement into new debt.[15] Bondholders were those holding unsecured senior bonds at 6.625% due to mature in 2021.[16] These equitizable obligations were ultimately included as the only deliverable in the final list of Deliverable Obligations.[17] In *Atos*, the credit event was triggered by the opening of accelerated safeguard proceedings which provided that "Unsecured Debt" was to be converted into "New Money Debt".[18] The "Unsecured Debt" included obligations under the RCF (€900,000,000 revolving credit facility dated 6 November 2014), Term Loan A (€1,500,000,000 term loan facility dated 29 July 2022) and the Bonds (of

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[10] Talen Energy Corporation Announces Successful Completion of Strategic Restructuring Transactions | Wed, 05/17/2023 - 08:00.

[11] The Neiman Marcus Group LLC Restructuring Term Sheet (pp. 2-7 of Restructuring Term Sheet).

[12] The Neiman Marcus Group LLC Restructuring Support Agreement (pp. 3-4, 11-12 of Restructuring Support Agreement); cdsdeterminationscommittees.org/documents/2020/05/final-list-issue-2020050701-the-neiman-marcus-group-llc-05-26-2020.pdf/ (see all Second Lien Notes, Third Lien Notes and Senior Debentures).

[13] Frontier Communications Corporation Restructuring Term Sheet (p. 4 of Restructuring Term Sheet).

[14] Frontier Communications Corporation Restructuring Support Agreement (pp. 3-4, 11 of Restructuring Support Agreement); cdsdeterminationscommittees.org/documents/2020/05/final-list-issue-2020041501-frontier-communications-corporation-05-04-2020.pdf/ (see all Unsecured Notes and Unsecured Debentures).

[15] Grupo Isolux Corsán, S.A. Chapter 15 Petition (p. 85).

[16] Grupo Isolux Corsán, S.A. Chapter 15 Petition (pp. 56-57).

[17] cdsdeterminationscommittees.org/documents/2016/08/isolux-final-list.pdf/.

[18] Atos SE Accelerated Safeguard Plan (page 33).

note, the 2025 Notes (€750,000,000 in bonds due 7 May 2025), 2028 Notes (€350,000,000 in bonds due November 2028) and 2029 Notes (€800,000,000 in sustainability-linked bonds due 12 November 2029)).[19] Every Deliverable Obligation included in the final list was Unsecured Debt and thus equitizable.[20]

b. <u>Amending the Auction Settlement Terms to allow for delivery of the Exchange Consideration for the SUNs would not Introduce New Moral Hazard to the CDS Contract</u>

Finally, the Challenge Brief also asserts – in our view incorrectly – that amending the Auction Settlement Terms for Ardagh, by effectively allowing asset-package delivery in a corporate CDS Contract, would introduce the very moral hazard risk that the Definitions sought to avoid when asset-package delivery terms were added to the Definitions.[21]

The Challenge Brief hypothesizes that different results could arise when comparing Restructuring transactions with differing facts and timelines. While that may be true, a finding that the SUNs had zero Outstanding Principal Balance would also result in "wildly divergent outcomes" between identical restructuring transactions that were pursued in-court (in which case obligations that were eventually equitized under an already-in-place restructuring support agreement would generally be deliverable) versus out-of-court (in which case the authors of the Challenge would have the DC say that there are no Deliverable Obligations). It is, of course, well understood that Restructuring Credit Events are complex and fact-intensive, and the fact that the Challenge authors underline what is arguably a flaw in the CDS product (that Restructuring transactions with immediate equitizations could hypothetically produce zero recovery for protection buyers) does not justify their effort to magnify that issue.

Finally, in warning the DC against introducing new moral hazards, the Challenge incorrectly assumes that a finding that the SUNs had an Outstanding Principal Balance in fact would amount to the introduction of asset-package delivery in standard corporate CDS. The EMEA DC has already encountered and addressed circumstances where a Deliverable Obligation survives a Credit Event and is due to be mandatorily exchanged in a binding restructuring transaction – for instance, in connection with the 2019 Steinhoff Europe AG Credit Event, the EMEA DC (i) delayed the Auction until completion of the company's restructuring transaction, which included the mandatory exchange of certain notes for undeliverable loans made by an affiliate of the Reference Entity, and (ii) applied DC Rule 3.2(d) to allow delivery of the package of loans received by holders of the exchanged notes.[22] We further note that, had the EMEA DC found a

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[19] Atos SE Accelerated Safeguard Plan (pp. 8-10, 13).

[20] https://www.cdsdeterminationscommittees.org/documents/2024/09/select-emea-dc-atos-final-list.pdf/.

[21] See Challenge at page 8.

[22] In the *Steinhoff* Statement explaining their rationale, the EMEA DC included the following note distinguishing this approach from asset-package delivery: "[b]y allowing delivery of the package of assets in the amount and proportions set out above following the Reference Entity's debt reconstitution, the standard CDS contract behaves in a manner broadly consistent with the outcomes that would have occurred had physical settlement applied. Note that this approach is not the same as Asset Package Delivery under the 2014 Definitions, which does not apply to the Transaction Type applicable to the Reference Entity (which is Standard European Corporate). The critical distinction is that Section 3.2(d) of the DC Rules is only concerned with situations where Physical Settlement would

Restructuring Credit Event to have occurred on 7 October 2025 (or on 29 September 2025 as the External Review panel indicated), no asset-package delivery (or reliance on DC Rule 3.2(d)) would have been needed as the bonds were, at that time, existing and tradeable. This is the very type of eventuality that DC Rule 3.2 is meant to cover.

In addition to the instant issue not being a novel one with the EMEA DC, the parade of horribles suggested by the Challenge authors is unlikely to occur for two reasons. First, DC Rule 3.2(d) is a discretionary rule that allows the DC to avoid situations that would unfairly prejudice protection sellers or buyers, as the case may be, so presumably the DC could elect not to utilize that rule in the face of the blatant (and undescribed) manipulation that the Challenge warns of, and, in fact, the EMEA DC has previously elected to utilize this rule because it believed that not doing so (a decision which would have been akin to determining that the SUNs had zero Outstanding Principal Balance) would unfairly prejudice protection buyers. Second, any potential future attempt to create an artificial payout in connection with a Restructuring would be deterred by the requirement that the facts and circumstances giving rise to the Restructuring must have resulted from the actual deterioration of the creditworthiness of the Reference Entity. This is the same language that serves as the primary deterrent against potentially manipulative structures in the Narrowly-Tailored Credit Event Supplement, which, since its entry into force, has been helpful in deterring market participants from placing reliance on intentionally manipulative structures.

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have been applicable to protection buyers had it been the applicable Settlement Method. In other words, the relevant Deliverable Obligation must have survived the occurrence of the Credit Event. By contrast, the Asset Package Delivery provisions only require that a Deliverable Obligation existed prior to the occurrence of the relevant Credit Event." Section 4.3 of the Steinhoff Statement.