Ardagh Packaging Finance PLC | Issue Number 2025100602

We, Tresidor Investment Management LLP, investment manager of Tresidor Europe Credit Limited, an Eligible Market Participant, hereby respond to the challenge filed by Arini Capital Management Limited (the "**Challenge**") to the inclusion of the SUNs (as defined in the Challenge) on the List of Deliverable Obligations for Ardagh Packaging Financing PLC ("**Ardagh**" or the "**Company**"). Terms not defined herein shall have the meaning given to them in the Challenge.

The Challenge contains multiple logical non-sequiturs and quotes selectively from the External Review Panel decision (the "**Decision**") in attempting to justify exclusion of the SUNs. None of the grounds outlined in the Challenge provide a valid reason for withdrawing the SUNs from the list of Deliverable Obligations.

Executive Summary:

1) The Decision covered the timing of a Credit Event under Article IV (Credit Events) and not a determination of an Outstanding Principal Balance under Article III (Terms Relating to Obligations and Deliverable Obligations). The Restructuring Credit Event under Article IV was based on an "agreement" to restructure, not the "occurrence" of a restructuring. This finding is incompatible with an assertion that the "terms of the obligation" [i.e., the SUNs] had already been amended.

2) The restructuring was driven by external factors (the TSA and Consent Solicitation Agreement) that were not "pursuant to the terms of the obligation[s]" of the SUNs.

3) The Challenge dangerously overexpands the meaning of "terms of the obligation" beyond the four-corners of the governing instrument to include a vague open-ended list of additional external factors which would render the ascertainment of the Outstanding Principal Balance practically unworkable.

4) If the "terms of the obligation" had already been amended, the steps taken after the occurrence of the Restructuring Credit Event such as the execution of the supplemental indenture and amicable agreement on 12 November 2025 would have been pointless. The Challenge ignores the Panel's explicit finding that that there was a possibility the restructuring might never be implemented.

5) Regardless of the landing on the other arguments, the changes to the SUNs are Permitted Contingencies because they were in the control of the SUNs.

6) An auction containing post-reorganisation instruments is established practice for Standard European Corporate auctions and most closely reflects the economic outcome that would have occurred under physical settlement.

Submissions:

1) **The Challenge misinterprets the findings in the Decision as applying to topics never considered by the Panel. The Decision covered the timing of a Credit Event under Article IV (Credit Events) and not a determination of an Outstanding Principal Balance under Article III (Terms Relating to Obligations and Deliverable Obligations).**

As a general remark on the Challenge, it repeatedly misinterprets the findings in the Decision, which relates to a topic wholly separate from the one currently being considered by the EMEA DC.

The Panel was asked to consider the narrow question of when a Restructuring Credit Event occurred in respect of Ardagh, which involved interpreting Article IV (Credit Events). The Panel did not consider any topic related to Deliverable Obligations in the Ardagh auction, which are separately regulated in Article III (Terms Relating to Obligations and Deliverable Obligations). The definitions of "Outstanding Principal Balance" and "Due and Payable Amount" are governed by a separate Article and separately defined as they play a different role to "Credit Events" in the ISDA architecture. The purpose of these definitions is to ensure that claims which have been compromised or impaired *for reasons other than a decline in the creditworthiness of the Reference Entity* reflect that impaired value in the auction procedures. This is manifestly not the case for the SUNs, whose principal balance has been equitised in response to a distressed financial restructuring of Ardagh. The practical effect of nearly all Credit Events is that there will be an inevitable impairment of the principal balance of Deliverable Obligations (most obviously, through the discharge of debt claims in bankruptcy). The situation in Ardagh is no different.

By arguing that the "agreement" to equitise the SUNs also constituted an amendment to the "terms of the obligation," the Challenge repeats a failed argument from the "No" submissions before the External Review Panel. If the TSA and consent solicitation had actually amended the contractual terms of the SUNs, the restructuring would have been "implemented" at that moment. This is the exact opposite of the Panel's core finding that an agreement can exist prior to implementation.[1] Indeed, if the terms had already been amended as the Challenge asserts, the referral to the Panel would have been redundant, as the restructuring would have already "occurred" under Section 4.7(a).

2) The First Ground in the Challenge ignores the central role of the TSA and the consent solicitation in the occurrence of the Restructuring Credit Event, in contravention of the Panel's findings.

Reductions in principal occurring "as a result of the effluxion of time or the occurrence or non-occurrence of an event or circumstance" should be deducted from the "Outstanding Principal Balance" where they result from "the terms of the obligation[s]".[2] The Challenge wrongly seeks to characterise the restructuring as not flowing from external agreements, namely the TSA and the consent solicitation, but rather principally from the existing indentures:

> "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]**," *all* holders of the SUNs to a transaction that would result in a mandatory exchange into equity interests in a new entity."[3]

Having just cited the necessity of the TSA and consent solicitation in binding SUN holders, the Challenge then proceeds to ignore the necessity of these steps in seeking to characterise the pending reduction in principal of the SUNs as flowing from the collective action clause in the relevant indentures. It attempts to justify this logic by flipping the requirement for the reduction to flow from "the terms of the obligation" on its head: "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 [….] Without the existing collective action clause there would not have been an agreement binding all noteholders […]";[4] Reading the Challenge on its face shows that factors external to the terms of the Obligation were responsible for the pending equitisation: if the principal reduction (and equitisation) of the SUNs flowed from the "terms of the obligation" then the TSA and consent solicitation would not have been required.

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[1] See specifically Decision, paragraph 17.
[2] Section 3.8(a)(ii) ISDA Definitions.
[3] Challenge, fourth paragraph of page 1.
[4] Challenge, first paragraph of page 4.

Such a loose reading of the meaning of "pursuant to the terms of the obligation" does not reflect the relevant wording of clause 3.8(a)(ii) of the 2014 ISDA Definitions. Reading the limitation the "terms of the obligation" as meaning "the terms of the obligation**, in conjunction with some other step**," renders a nonsense of the specificity of the drafting.

Almost any conceivable change to an obligation involves some interaction with the terms of the obligation itself. The vague and uncertain approach suggested by the Challenge would be practically unworkable for determining an Outstanding Principal Balance, as it would necessitate an open-ended inquiry into other causal factors which have some interaction with the terms of the obligation.

In the quotes cited above,[5] the Challenge attempts to find support in the Decision for its suggested approach of focusing primarily on the operation of the mechanics of the indenture. In doing so, it mischaracterises the rationale of the Decision. The essentiality of the TSA and the consent solicitation in triggering the Restructuring Credit Event is *the* key finding of the Decision. It is explicitly stated in the Decision as follows: "[The Restructuring Credit Event] was constituted by a combination of the TSA and the agreed Consent Solicitations."[6] These factors, and not "the terms of the obligation", are the driving force in the principal reduction.

3) **The Second Ground in the Challenge dangerously overexpands the meaning of "terms of the obligation" beyond the governing document constituting the obligation.**

The Challenge then attempts to rectify the issues in its first ground of challenge by suggesting that "the terms of the obligation[s]" should be expanded to include the TSA and the pre-agreed consent solicitation. This similarly strains the text of the 2014 ISDA Definitions by adopting an excessively broad definition as to what the "terms of the obligation" are.

The justification for the TSA and pre-agreed consent solicitation being considered as part of the "terms of the obligation" is 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".[7] This is a logical non-sequitur. There is nothing inherent in all noteholders being bound by a particular obligation which means that such obligation

[5] On page 1 of the Challenge, it quotes paragraph 17(d)(vi) of the Decision.
[6] Decision, paragraph 25.
[7] Challenge, second paragraph of page 5.

forms part of the "terms of the obligation". Legislative changes, government announcements, court orders, and other events may have the effect of binding all holders, yet it would be wrong to treat those items as part of the "terms" of the obligation. Consistent with the EMEA DC's established practice, the "terms of the obligation" most naturally refers to the instrument constituting and governing the relevant obligation.

Furthermore, the Challenge's suggested approach, of looking to a broad expanse of interim steps, agreements, and documents outside the four-corners of the indentures governing the obligation would lead to a situation of extreme uncertainty. A detailed fact-finding exercise would be required for the EMEA DC to arrive at any decision on the Outstanding Principal Balance of all future Deliverable Obligations, to establish whether any interim document or step could hypothetically lead to a principal reduction.

Finally, to reiterate the discussion in paragraph 1 above, this approach of expanding the "terms of the Obligation" to capture as-of-yet-unimplemented amendments results in the unnatural collapse of an "agreement" to restructure with the "implementation" or "occurrence" of the restructuring that actually amends the terms of the obligation, contrary to the Panel's findings.

4) **If the "terms of the obligation" had already been amended, the steps taken after the occurrence of the Restructuring Credit Event would have been pointless.**

If the "terms of the obligation" had already been amended, there would have been no point to the further steps taken to implement the restructuring following the occurrence of the Restructuring Credit Event on 29 September 2025. Most notably, the required steps to change the "terms of the obligation" included both the execution of a supplemental indenture to the SUNs and the Luxembourg court sanctioning the Amicable Agreement, each occurring on 12 November 2025.

The Decision explicitly acknowledged that a practical impact of its findings was that a Restructuring Credit Event may occur even if the restructuring is never consummated.[8] The obvious corollary of this finding is that the obligation remains unamended until implementation: if Ardagh entered a free-fall insolvent bankruptcy after the occurrence of the Restructuring Credit Event but prior to the execution of the supplemental indenture on 12 November 2025, by their terms the TSA and consent solicitation would terminate, and the SUNs would

[8] Decision, paragraph 17(d)(vii): "We acknowledge, as was submitted by the No Presented Position, that such an interpretation could lead to a scenario in which there is a Restructuring Credit Event under Limb 2 but where, because the transaction is never actually implemented, there is no "event" falling within Section 4.7(a)(i)-(iv). But we see that as an intended consequence of the drafting rather than an error in the interpretation."

never be equitised. In those circumstances, the SUNs would still constitute valid claims for their full-face amount in a bankruptcy.

This variety of possible outcomes was something explicitly recognised by the Panel in the Decision: "Perhaps that is an extreme example but it lends support to the view that the Definitions espouse a range of possibilities in accordance with their terms, **and that Credit Events are not necessarily limited to finalised and certain outcomes**."[9] [*emphasis added*] The Challenge ignores this finding by the Panel that uncertainty as to the ultimate outcome may exist at the time of the Restructuring Credit Event and, instead, referred to it being a case of Schrödinger's Obligation.[10] This uncertainty exists because, as explained in paragraph 1 above, Credit Events and the definition of "Outstanding Principal Balance" play different roles in the ISDA architecture.

Regardless of the prospects (and uncertainty) of any future implementation of the restructuring, at the Event Determination Date the SUNs had not yet been cancelled, equitised, or their principal value otherwise reduced, and their principal obligation remained outstanding (and not contingent) under "the terms of the obligation".

5) The Challenge misinterprets the "Permitted Contingency" exception.

Regardless of the landing on the arguments above, there is an exception for reductions in the Outstanding Principal Balance flowing from Permitted Contingencies, which include changes that are "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".

The effect of this drafting is that reductions which are in the control of the Obligation holders do not count towards reductions in the Outstanding Principal Balance. The SUN holders led, negotiated and agreed the restructuring of Ardagh. The TSA and the consent solicitation are a manifestation of the SUN holders "exercising their rights under or in respect of such obligation". As a result, Section 3.11(b) requires that any changes in principal occurring as a result of the use of collective voting procedures are ignored in calculating the "Outstanding Principal Balance".

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[9] Decision, paragraph 17(d)(viii).

[10] Challenge, page 2: "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."

The Challenge invites the EMEA DC to ignore that the TSA and consent solicitation were the product of SUN holders exercising their contractual amendment rights, and disregarding this history, to look forward only to the new obligations imposed on SUN holders. This is an artificial approach which is unsupported by the definition of "Permitted Contingency" and which the EMEA DC should decline to follow.

6) **The Challenge reads a prohibition on post-reorganisation obligation delivery into the ISDA Definitions which does not exist.**

The Challenge concludes with a discussion of asset package delivery, although it does not explain how this discussion impacts the interpretation of "Outstanding Principal Balance". It is addressed by way of completeness.

Section 3.2(d) of the 2018 ISDA Credit Derivatives EMEA DC Rules (the "**DC Rules**") has been used to allow the delivery of post-reorganisation instruments that reflect the value of the pre-reorganisation Deliverable Obligations in several instances, for example, in the auction of Steinhoff Europe AG.

The Challenge suggests that by not explicitly providing for this optionality, the 2014 ISDA Master Definitions forbids post-reorganisation instrument delivery. This approach reads text into the 2014 Master Definitions which does not exist, and suggests that the EMEA DC erred in seeking to achieve reasonable auction outcomes that reflect the economic experience of creditors by amending auction procedures in cases such as Steinhoff, Altice France, Isolux, and Atos. The Challenge attempts to cleave an arbitrary distinction between the approach in those cases and Ardagh by noting that none of those decisions followed Restructuring Credit Events. However, the same factors in those cases, namely the desire for the auction to reflect the credit deterioration in the relevant Obligation, are equally at play in Ardagh. Ardagh followed a common path for a European restructuring, namely implementation following extensive negotiation rather than a bankruptcy. The CDS contract, given the presence of the Restructuring Credit Event, was designed to payout in these situations. Drawing an artificial distinction between a Restructuring and Bankruptcy Credit Event would cleave an artificial distinction in the EMEA DC's established discretion to amend auction procedures to achieve their primary purpose: facilitating the settlement of CDS in a manner that reflects the economic reality experienced by holders of the underlying obligations. This would prevent the proper functioning of the European CDS market by generating unrepresentative auction terms following Restructuring Credit Events.

The ability to deliver post-reorganisation instruments is important as it most closely matches the economic experience that would have occurred under physical settlement of the contract. The EMEA DC should not allow the delays in the Ardagh auction arising from the extensive debate about the timing of the relevant Credit Event (and consequent Panel review) to frustrate holding an effective auction.

Finally, the gamesmanship arguments in the final section of the Challenge do not cut all one way. If the result of the EMEA DC's decision is that an obligation holder can structure a restructuring, so that a holder of a Deliverable Obligation can suffer material loss but the auction does not yield a representative price corresponding to the credit deterioration quality, obligation holders who sell CDS protection will be incentivised to artificially structure a restructuring to trigger this result.