

Determinations Committee Decision

Date:	July 13, 2010
Determinations Committee:	Americas
Meeting Date:	July 13, 2010

DC Issue 2010062901:	With reference to the Determinations Committee's powers under Section 3.8 of the Credit Derivatives Determinations Committees Rules, do you agree that the corporate events related to ERAC USA Finance Company's conversion into ERAC USA Finance LLC on July 31, 2009 should be treated as a name change for purposes of Relevant Transactions entered into on or prior to the date of the Determinations Committee's ruling on this question?	
1st Question for vote:	With reference to the Determinations Committee's powers under Section 3.8 of the Credit Derivatives Determinations Committees Rules, do you agree that the corporate events related to ERAC USA Finance Company's conversion into ERAC USA Finance LLC on July 31, 2009 should be treated as a name change for purposes of Relevant Transactions entered into on or prior to the date of the Determinations Committee's ruling on this question?	
Vote result:	Yes	
Votes:	15 'Yes' votes and 0 'No' votes	
	Bank of America / Merrill Lynch	Yes
	Barclays	Yes
	BlueMountain Capital	Yes
	Citadel	Yes
	Citibank	Yes
	Credit Suisse	Yes
	D.E. Shaw	Yes
	Deutsche Bank	Yes
	Elliott Management Corporation	Yes
	Goldman Sachs	Yes
	JPMorgan	Yes
	Morgan Stanley	Yes
	Pacific Investment Management Company LLC	Yes
	RBS	Yes
	UBS	Yes

2nd Question for vote:	Do you agree to publish the attached statement? (See Annex.)	
Vote result:	Yes	
Votes:	15 'Yes' votes and 0 'No' votes	
	Bank of America / Merrill Lynch	Yes
	Barclays	Yes
	BlueMountain Capital	Yes
	Citadel	Yes
	Citibank	Yes
	Credit Suisse	Yes
	D.E. Shaw	Yes
	Deutsche Bank	Yes
	Elliott Management Corporation	Yes
	Goldman Sachs	Yes
	JPMorgan	Yes
	Morgan Stanley	Yes
	Pacific Investment Management Company LLC	Yes
	RBS	Yes
	UBS	Yes

Annex

This Statement is published by the Americas Credit Derivatives Determinations Committee (**DC**) in accordance with Section 2.5(d) of the Credit Derivatives Determinations Committees Rules in relation to Issue Number 2010062901 relating to ERAC USA Finance Company (the **ERAC Question**).

This Statement is not, and does not purport to be, binding with respect to any other determination of any Credit Derivatives Determinations Committee (a **Committee**) nor does it preclude any other Committee from making a different determination when resolving a question similar to the ERAC Question, including any such question that relates to similar facts.

STATEMENT

In reaching their conclusions on the ERAC Question, the members of the DC took note of the following considerations (each member of the DC may not have relied on all of the considerations contained in this Statement, and one, or any combination, of such considerations may have been sufficient for a member of the DC to reach its individual conclusion):

1. **Lack of widely available accurate information following the effective date of the Corporate Action.**
 - (a) On July 29, 2009, ERAC USA Finance LLC was created as a wholly owned subsidiary of Enterprise Holdings, Inc. and on July 31, 2009 ERAC USA Finance Company was merged into ERAC USA Finance LLC (the **Corporate Action**).
 - (b) Until mid-June 2010, Enterprise Holdings, Inc. continued to refer to the Reference Entity as a Missouri corporation rather than a Delaware limited liability company (as a result, searches of the public filings related to ERAC USA Finance Company would not have revealed the Corporate Action).
 - (c) After the Corporate Action, Enterprise Holdings, Inc. continued to refer to the Reference Entity as a corporation rather than a limited liability company.
2. **Similarity of Corporate Action to mere change in form.**
 - (a) The DC has been advised by corporate lawyers that a Delaware corporation typically selects one of two methods when it converts to a limited liability company—direct conversion or a two step merger—and that either method will achieve the same result—namely, a conversion of the legal form of the Delaware corporation into a Delaware limited liability company without any change in such entity's assets or liabilities.
 - (b) Widely available information from the Reference Entity indicates that the Corporate Action was undertaken only to effect a conversion in the legal form of the Reference Entity and—as is typical in such a transaction—following the Corporate Action, there ceased to be a corporation known as ERAC USA Finance Company (all assets and liabilities of which were retained by ERAC USA Finance LLC) and there was no change in the ownership, nor was there a recapitalization or other change to the capital structure, of the Reference Entity.
3. **Interpretation of Section 2.1 of the Credit Derivatives Definitions (the 2003 Definitions).**

Under Section 2.1 of the 2003 Definitions, a "Reference Entity means the entity or entities specified as such in the related Confirmation", but where the entity specified in the related Confirmation either does not exist at the time a Credit Derivative Transaction is entered into or ceases to exist after a Credit Derivative Transaction is entered into because it has become another entity, and Section 2.2 of the 2003 Definitions does not otherwise apply, it becomes necessary to interpret this definition. One interpretation would be that this definition would best be treated as referring to the legal entity that the entity became.

4. **Potential loss of fungibility of Credit Derivative Transactions.**

If, as a result of the Corporate Action, Credit Derivative Transactions that referenced ERAC USA Finance Company are not treated as Credit Derivative Transactions referencing ERAC USA Finance LLC, the legal remedies of parties to such Credit Derivative Transactions are likely to vary according to the date on which they entered into such Credit Derivative Transactions, since:

- (a) Credit Derivative Transactions entered into on or after the Corporate Action risk being either reformed to refer to ERAC USA Finance LLC or rescinded pursuant to the contractual doctrine of mutual mistake; whereas
- (b) Credit Derivative Transactions entered into before the Corporate Action risk being determined to be contracts that reference a nullity since no entity with the name ERAC USA Finance Company exists any longer or risk being rescinded pursuant to the contractual doctrine of frustration.

It would therefore be necessary to differentiate between Credit Derivative Transactions entered into before, and Credit Derivative Transactions entered into on or after (including by way of trade compression runs), the Corporate Action meaning that none of the above outcomes would permit all Credit Derivative Transactions referencing the Reference Entity to be treated as fungible with each other. An outcome that undermines the fungibility of Credit Derivative Transactions would be contrary to the purposes of the Big Bang Protocol and the Small Bang Protocol.