

Determinations Committee Decision

Date:	April 14, 2011
Determinations Committee:	Americas
Meeting Date:	April 14, 2011

DC Issue 2011040401:	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 New Albertson's, Inc. by which it changed its jurisdiction of incorporation from Delaware to Ohio on December 26, 2008 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 New Albertson's, Inc. by which it changed its jurisdiction of incorporation from Delaware to Ohio on December 26, 2008 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
	BlackRock	Yes
	BlueMountain Capital	Yes
	Citadel	Yes
	Citibank	Yes
	Credit Suisse	Yes
	D.E. Shaw	Yes
	Deutsche Bank	Yes
	Goldman Sachs	Yes
	JPMorgan	Yes
	Morgan Stanley	Yes
	RBS	Yes
	Rabobank International	Yes
	UBS	Yes

2nd Question for vote:	Do you agree to publish the attached statement? (Please see Annex.)	
Vote result:	Yes	
Votes:	15 'Yes' votes and 0 'No' votes	
	Bank of America / Merrill Lynch	Yes
	Barclays	Yes
	BlackRock	Yes
	BlueMountain Capital	Yes
	Citadel	Yes
	Citibank	Yes
	Credit Suisse	Yes
	D.E. Shaw	Yes
	Deutsche Bank	Yes
	Goldman Sachs	Yes
	JPMorgan	Yes
	Morgan Stanley	Yes
	RBS	Yes
	Rabobank International	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 2011040401 relating to New Albertson's, Inc. (the **Albertson 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 Albertson Question, including any such question that relates to similar facts.

STATEMENT

In reaching their conclusions on the Albertson 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. **Similarity of Corporate Action to mere change in jurisdiction of incorporation.**

- (a) On December 26, 2008, NAI, Inc. was incorporated in Ohio as a wholly owned subsidiary-corporation of SuperValu Inc. On the same day, New Albertson's, Inc., a Delaware incorporated wholly owned subsidiary-corporation (the **Reference Entity**) of SuperValu Inc., merged into NAI, Inc. and, concurrent with this merger, NAI, Inc. changed its name to New Albertson's, Inc. (the **Corporate Action**).
- (b) The DC has been advised by corporate lawyers that a U.S. corporate entity typically changes its jurisdiction of incorporation by merging into an entity already incorporated in the new jurisdiction (a reincorporation merger).
- (c) Following the Corporate Action—as is typical in a transaction where a U.S. corporate entity changes its jurisdiction of incorporation—there ceased to be a Delaware incorporated corporation known as New Albertson's, Inc. (all assets and liabilities of which were retained by New Albertson's, Inc. incorporated in Ohio (formerly known as NAI, Inc.)) and there was no change in ownership, nor was there a recapitalization or other change to the capital structure, due to the Corporate Action.

2. **Inaccurate information published following the effective date of the Corporate Action.**

In one of its public filings following the Corporate Action, SuperValu Inc. referred to New Albertson's, Inc. as a Delaware corporation rather than an Ohio corporation.

3. **Interpretation of Section 2.1 of the 2003 ISDA 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 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 referencing New Albertson's, Inc. that were entered into prior to the Corporate Action are not treated as Credit Derivative Transactions referencing New Albertson's, Inc. incorporated in Ohio, legal remedies of parties to Credit Derivative Transactions referencing New Albertson's, Inc. are likely to vary according to the date on which such parties entered into such Credit Derivative Transactions, since Credit Derivative Transactions entered into before the Corporate Action risk being determined to be contracts that reference a nullity since no Delaware incorporated entity with the name New Albertson's, Inc. 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 New Albertson's, Inc. 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.