

Determinations Committee Decision

Date:	September 25, 2013
Determinations Committee:	Americas
Meeting Date:	September 25, 2013

DC Issue 2013091702:	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 Energy Future Holdings Corp. on or about April 15, 2013 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?	
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 N.A.	Yes
	Barclays Bank plc	Yes
	BlueMountain Capital Management, LLC	Yes
	BNP Paribas	Yes
	Citadel LLC	Yes
	Citibank, N.A.	Yes
	Credit Suisse International	Yes
	D. E. Shaw & Co., L.P.	Yes
	Deutsche Bank AG	Yes
	Elliott Management Corporation	Yes
	Goldman Sachs International	Yes
	JPMorgan Chase Bank, N.A.	Yes
	Morgan Stanley & Co. International plc	Yes
	Pacific Investment Management Co., LLC	Yes
	UBS AG	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 2013091702 relating to Energy Future Holdings Corp. (the **EFH 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 EFH Question, including any such question that relates to similar facts.

STATEMENT

In reaching their conclusions on the EFH 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. **Corporate Action taken to achieve certain tax objectives.**

- (a) Energy Future Holdings Corp. was a for-profit corporation organized under the laws of Texas (the **Reference Entity**). EFH2 Corp. was a for-profit corporation which was, at the time of the Corporate Action, newly formed under the laws of Texas as a wholly owned subsidiary of the Reference Entity. On April 15, 2013, to achieve certain tax objectives, the Reference Entity merged with and into EFH2 Corp. and, concurrent with this merger, EFH2 Corp. changed its name to Energy Future Holdings Corp. (the **Corporate Action**).
- (b) As a result of the Corporate Action the original entity known as Energy Future Holdings Corp. (**Old EFHC**) ceased to exist and all rights and obligations of Old EFHC became rights and obligations of the new entity known as "Energy Future Holdings Corp." (which had formerly been known as EFH2 Corp.) (**New EFHC**). The board of directors of Old EFHC became the board of directors of New EFHC and the officers of Old EFHC became officers of New EFHC immediately following the Corporate Action. Each share of common stock in Old EFHC was converted into a share of common stock in New EFHC and constituted the only shares of capital stock of New EFHC immediately after the Corporate Action. The Form 8-K dated April 15, 2013 with respect to Energy Future Holdings Corp. and two of its subsidiaries states that the "Transactions had no, and will have no, effect on [New EFHC's or its subsidiaries'] results of operations, liquidity or financial statements".

2. **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 it is not certain that Section 2.2 of the 2003 Definitions should, in light of the circumstances at hand, be viewed as applicable, 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.

3. Potential loss of fungibility of Credit Derivative Transactions.

If, as a result of the Corporate Action, Credit Derivative Transactions referencing Energy Future Holdings Corp. that were entered into prior to the Corporate Action are not treated as Credit Derivative Transactions referencing New EFHC, legal remedies of parties to Credit Derivative Transactions referencing Energy Future Holdings Corp. 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 Old EFHC no longer exists 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 date of the Corporate Action meaning that none of the above outcomes would permit all Credit Derivative Transactions referencing Energy Future Holdings Corp. 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.