

Determinations Committee Decision

Date:	October 10, 2017
Determinations Committee:	EMEA (Europe)
Meeting Date:	October 10, 2017

DC Issue 2017030301	Is there a Successor to RWE Aktiengesellschaft?
1 st Question for vote:	<p>1. Does the EMEA DC agree that:</p> <p>a. for the purposes of the ISDA 2003 Credit Derivatives Definitions (as supplemented), a Succession Event did occur with respect to RWE Aktiengesellschaft on 20 July 2017 and that innogy SE is the sole Successor; and</p> <p>b. for the purposes of the ISDA 2014 Credit Derivatives Definitions, innogy SE is the sole Successor to RWE Aktiengesellschaft and the Succession Date is 20 July 2017?</p>
Vote result:	Yes
Votes:	<p>15 "Yes" votes - Bank of America N.A. Barclays Bank plc BNP Paribas Citibank, N.A. Credit Suisse International Deutsche Bank AG Goldman Sachs International JPMorgan Chase Bank, N.A. Mizuho Securities Co., Ltd. Morgan Stanley & Co. International plc AllianceBernstein L.P. Citadel LLC Cyrus Capital Partners, L.P. Elliott Management Corporation Pacific Investment Management Co., LLC</p> <p>0 "No" votes</p>
2 nd Question for vote:	<p>Does the EMEA DC agree to publish the following statement:</p> <p>“October 10 2017: The EMEA DC determined that: (i) for the purposes of the 2014 ISDA Credit Derivatives Definitions (2014 Definitions), innogy SE (innogy) became the sole Successor to RWE Aktiengesellschaft (RWE) on 20 July 2017 pursuant to Section 2.2(a)(i) of the 2014 Definitions; and (ii) for the purposes of the 2003 ISDA Credit Derivatives Definitions (2003 Definitions) as supplemented by either (a) the 2009 ISDA Credit Derivatives Determinations Committees and Auction Settlement Supplement to the 2003 Definitions published on March 12, 2009 or (b) the 2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 Definitions published on July 14, 2009 (in each case as supplemented, Updated 2003 Definitions, and together with 2014 Definitions, the Definitions), innogy</p>

became the sole Successor to RWE on 20 July 2017 pursuant to Section 2.2(a)(i) of the Updated 2003 Definitions. Capitalised terms used but not defined in this statement shall have the meaning given to them in the Definitions (as applicable).

Following RWE's announcement in December 2015 of its intention to split its business to create a new listed company, RWE International SE was renamed innogy on 1 April 2016 and was scheduled to operate under that name from 1 September 2016 onwards. On 30 June 2016, RWE held a Capital Markets Day presentation to introduce innogy and confirmed that "[a]ll senior debt was to be moved to innogy". In RWE's 2016 Annual Report, RWE re-confirmed that it was to optimise its financial structure by transferring the bulk of its capital market debt to innogy. RWE's intention to transfer such debt and the occurrence of a series of debt transfers from RWE to innogy in sequence indicated the existence of a steps plan, which was complete when two loans granted by the European Investment Bank (**EIB Loans**) were transferred to innogy on 20 July 2017. RWE's Interim Report on the First Half of 2017 Results indicates that the EIB Loans "were transferred from RWE to innogy as part of a debtor switch. In return, two corresponding group loans were cancelled. With this move, the reallocation of RWE's capital market debt to innogy, which was agreed as part of the IPO of our subsidiary, is now completed."

Under Section 2.2(d) of the 2014 Definitions and Section 2.2(c) of the Updated 2003 Definitions, an entity "succeeds" to Relevant Obligations if it either "assumes or becomes liable for such Relevant Obligations" or issues Bonds "that are exchanged for Relevant Obligations" and, in either case, the Reference Entity is not thereafter an obligor or guarantor with respect to such Relevant Obligations. Where an entity assumes or becomes liable for a Relevant Obligation as guarantor, such guarantee must be a Relevant Guarantee in accordance with the 2014 Definitions. In determining one or more Successors (if any) to RWE for the purposes of the Definitions, the EMEA DC also considered the guarantees in respect of which RWE was replaced by innogy as guarantor of certain bonds issued by innogy Finance BV (previously RWE Finance BV) or Innogy Finance II BV (previously RWE Finance II BV) (**Relevant Bonds**) and, based on the information available to it, concluded that:

- the guarantees given by RWE of the Relevant Bonds (**RWE Guarantees**) constitute Qualifying Guarantees and therefore Relevant Obligations;
- RWE has been replaced by innogy as guarantor of the Bonds and RWE is no longer a guarantor/obligor in respect of those Relevant Bonds, which is also confirmed by innogy's 2016 annual report which states that innogy had become guarantor or debtor of all RWE's senior bonds; and
- the guarantees given by innogy in respect of the Relevant Bonds constitute Qualifying Guarantees.

Taking into account the relevant debt transfers, the EMEA DC determined that: (i) innogy succeeded to more than 75% of the Relevant

	Obligations and is the sole Successor to RWE under Section 2.2(a)(i) of the 2014 Definitions and Section 2.2(a)(i) of the Updated 2003 Definitions respectively." ?
Vote result:	Yes
Votes:	<p>15 "Yes" votes - Bank of America N.A. Barclays Bank plc BNP Paribas Citibank, N.A. Credit Suisse International Deutsche Bank AG Goldman Sachs International JPMorgan Chase Bank, N.A. Mizuho Securities Co., Ltd. Morgan Stanley & Co. International plc AllianceBernstein L.P. Citadel LLC Cyrus Capital Partners, L.P. Elliott Management Corporation Pacific Investment Management Co., LLC</p> <p>0 "No" votes</p>