

To: International Swaps and Derivatives Association  
Credit Derivatives Determinations Committee  
Re: Interpretation of Section 11.1(b)(iii) of the 2014 Credit Definitions  
Date: March 14, 2018

We write in response to the statement provided to the ISDA Credit Derivatives Determinations Committee (“Determinations Committee”) on March 14, 2018 (the “March 14 Statement,” No. 2018031401), which was submitted in response to the General Interest Question posed to the Determinations Committee on March 13, 2018 (the “General Interest Question,” No. 2018031301), seeking interpretative guidance regarding Section 11.1(b)(iii) of the 2014 ISDA Credit Derivatives Definitions.

The March 14 Statement argues that the General Interest Question is “improperly submitted for deliberation” because it is posed in the abstract, “unmoored from the context of a particular transaction.” It further argues that acceptance of the question “would constitute a departure from the intended and historic limited use of General Interest Questions and undermine the established review and deliberation process set forth in the Credit Derivatives Determination Rules regarding current events affecting outstanding CDS contracts.”

This argument is incorrect. Contrary to the suggestion in the March 14 Statement, consideration of the General Interest Question in the form it was posed, unrelated to a specific live bilateral dispute, is crucial to Market Participants and perfectly in keeping with the intended and historic use of general interest questions.

*First*, while there is indeed a live bilateral dispute that implicates the General Interest Question, it is a question with general and immediate relevance to the CDS market. As the statement submitted with the General Interest Question points out, the CDS market requires market participants to assess risk based on the assumption that Reference Entities will endeavor to avoid payment defaults when possible. If manufactured defaults—paid for by protection buyers—are determined to be permissible under Section 11.1(b)(iii) (or its predecessor), this assumption, which underpins all outstanding CDS on single-name corporate issuers and related indices, would be turned on its head.

Moreover, in the pending litigation between Solus Alternative Asset Management LP and GSO Capital Partners, LP (“GSO”), GSO has repeatedly claimed that the transaction at issue is just one in a series of induced defaults that have occurred in recent years. The repetition of engineered defaults in factually distinct situations only underscores the need for resolution of the related General Interest Question, divorced from the “relevant facts and context” of a particular bilateral dispute. A failure by the Determinations Committee to address the General Interest Question would have the effect of inviting future defaults paid for by protection buyers.

*Second*, the General Interest Question fits precisely within Section 3.8(b) of the Credit Derivatives Determination Committee Rules, which states clearly that “[a]ny ... **matter of contractual interpretation relevant to the credit derivatives market generally (that is not merely a matter of bilateral dispute solely between two Eligible Market Participants)** may be Resolved by a Supermajority [80%], separately, of each Committee convened for each relevant Region, as determined by the DC Secretary” (emphasis added). By using the word “merely,”

Section 3.8(b) plainly contemplates a situation where a general interest question is used to resolve a matter of contractual interpretation that, although bearing on a bilateral dispute, *is also* relevant to the credit derivatives market generally. Given the strongly diverging views in the market as to the meaning of Section 11.1(b)(iii), and the uncertainty that has been created as a result of this divergence, considering the General Interest Question is not only perfectly in keeping with the “intended and historic” purpose of General Interest Questions, but also critical to the ongoing operation of the credit derivatives market generally.

\* \* \*

We confirm that a copy of this statement may be provided for information purposes only to the members of any Credit Derivatives Determinations Committee convened under the DC Rules in connection with the General Interest Question to consider the issues discussed herein, and that it may be made publicly available on the ISDA Credit Derivatives Determinations Committee website. We accept no responsibility or legal liability in relation to its contents.