

GENERAL INTEREST QUESTION: Should the DC reject or dismiss a general interest question posed to the DC that purports to be hypothetical but relates to a current dispute between Eligible Market Participants?

This statement is submitted in connection with the General Interest Question posted to ISDA on March 13, 2018 seeking an interpretation of Section 11.1(b)(iii) of the 2014 ISDA Credit Derivatives Definitions (and, as applicable, its predecessor, Section 9.1(b)(iii) of the 2003 ISDA Credit Derivatives Definitions). As the submission to ISDA notes, the interpretation of this clause is at issue in a series of transactions between GSO Capital Partners, LP (“GSO”), on the one hand, and Hovnanian Enterprises, Inc. and certain affiliates (together, “Hovnanian”), on the other, and is central to pending litigation between GSO and Solus Alternative Asset Management, LP (“Solus”)<sup>1</sup>. As part of those transactions, market participants widely expect Hovnanian to miss an interest payment due May 1, 2018, owed on certain of its debt, which, following a 30-day grace period, will almost certainly lead to a request to ISDA to convene the Determinations Committee (“DC”) to decide whether a Credit Event has occurred.

The General Interest Question thus seeks to decide a question as to which there is a live bilateral dispute between Eligible Market Participants that may be presented to the DC in a matter of months. As such, the General Interest Question posted today is improperly submitted for deliberation by the DC. Moreover, deciding this question in the abstract with both prospective and retrospective effect—unmoored from the context of a particular transaction that gives rise to an actual Credit Event involving GSO, Solus and Hovnanian—would deprive the DC of the relevant facts and context that it typically would consider in connection with such a determination. Accepting a question that is part of a ripening bilateral dispute as a General Interest 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. Accordingly, we respectfully request that the DC refuse to consider the General Interest Question submitted earlier today.

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.

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<sup>1</sup> Solus Alternative Asset Management LP v. GSO Capital Partners LP, No. 1:18-cv-00232-LTS-BCM, 2018 WL 620490.