

EMEA DC Meeting Statement 25 May 2018

1. SUMMARY

The DC met on 24 May 2018 to discuss whether a Failure to Pay Credit Event occurred with respect to Astaldi SpA (the **Reference Entity**) in relation to 2014 Transactions and Updated 2003 Transactions (together **Relevant Transactions**) as under an €8.7 million credit facility (the **Bilateral Loan**) advanced by Banco do Brasil S.A. (the **Lender**) which was due for repayment on 11 May 2018.

The DC Resolved that, based on the public information available to it at such time, a Failure to Pay Credit Event has not occurred with respect to the Reference Entity in relation to 2014 Transactions nor Updated 2003 Transactions.

Capitalised terms used but not defined in this Meeting Statement have the meanings given to them in the Credit Derivatives Determinations Committees Rules (January 20, 2016 version) (including in the 2014 Definitions and the Updated 2003 Definitions, each as defined therein, together the **Definitions**) (the **DC Rules**).

2. ANALYSIS

As part of its deliberations, the DC considered the following material issues:

2.1 Publicly Available Information

The first issue the DC considered was whether the supporting information that accompanied the request to the DC Secretary on 23 May 2018 constituted good Publicly Available Information, such information being (i) an investor conference call entitled "2018-2022 Strategic Plan Presentation" held by the Reference Entity on 16 May 2018 (the **16/5 Call**), a recording of which has been published by the Reference Entity and (ii) a Bloomberg article dated 16 May 2018 (the **16/5 Article**).¹

Section 2.1(b) of the DC Rules states that the DC may not deliberate a Potential DC Issue relating to whether a Credit Event has occurred until the DC determines that Publicly Available Information (as defined in Section 1.35 of the 2014 Definitions) has been provided to the DC Secretary.

The DC agreed that as the 16/5 Call was information received from the Reference Entity itself via a telephone call of which there is a recording in the public domain, this was capable of constituting Publicly Available Information and it would not be necessary for the DC to be in possession of information from another public source².

During the question and answer session on the 16/5 Call, reference was made to the Bilateral Loan with the Lender which was due for repayment on 11 May 2018. Management of the Reference Entity stated, *inter alia*, that negotiations were underway with the Lender to see whether it was possible to postpone repayment of the Bilateral Loan until after the implementation of the Reference Entity's financial plan. In other words, as there is an express statement by the CEO regarding postponement of a payment that was due 5 days earlier, it must follow that the Bilateral Loan was not in fact repaid on its due date of repayment of 11 May 2018.

As part of the DC's consideration whether the 16/5 Call provided sufficient information so as to constitute Publicly Available Information, in addition to the necessary implication of non-payment of the Bilateral Loan on its due date for repayment of 11 May 2018, the DC noted that the Bilateral Loan was described as a 'loan' on such call (and therefore seemingly it is a borrowed money obligation) and there was no suggestion

¹ Conference call playback available [here](#) (Bilateral Loan Q&A from 1:55:20 onwards) and 16/5 Article available [here](#).

² Section 1.35(a)(ii) of the 2014 Definitions/Section 3.5(a)(ii) of the Updated 2003 Definitions.

that the Reference Entity is a guarantor (as opposed to borrower) of the Bilateral Loan (and therefore the Qualifying Guarantee test would not be relevant as to whether the Bilateral Loan constitutes an 'Obligation' for purposes of the Relevant Transactions). The DC also noted that there are no Obligation Characteristics applicable to the Standard European Corporate Transaction Type and so it appeared that the Bilateral Loan constituted an 'Obligation'. The only item relevant to the Failure to Pay Credit Event definition that was not referred to in the 16/5 Call was whether the Bilateral Loan contains a grace period in relation to payments and, if so, whether that grace period had expired or been extended.

In light of the foregoing, the DC was of the view that the 16/5 Call was "information that *reasonably confirms any of the facts relevant to the determination that the Credit Event...[has] occurred...*" (emphasis added) as required by the definition of Publicly Available Information.³ Furthermore, the definition of Publicly Available Information provides that Publicly Available Information "need not state...that the relevant occurrence...*is the result of exceeding any applicable Grace Period*"⁴ (emphasis added) and so it did not matter that the 16/5 Call was not clear on the existence, expiration or extension of any grace period under the Bilateral Loan. Accordingly the DC was of the view that the 16/5 Call constituted good Publicly Available Information which could be used by the DC to commence its deliberations on the Credit Event question itself.

2.2 Failure to Pay

Section 4.5 of both sets of Definitions provides that a "Failure to Pay" Credit Event means "*after the expiration of any applicable Grace Period (after the satisfaction of any conditions precedent to the commencement of such Grace Period), the failure by [the] Reference Entity to make, when and where due, any payments in an aggregate amount of not less than the Payment Requirement under one or more Obligations, in accordance with the terms of such Obligations at the time of such failure.*"

The DC focussed on the first two limbs of this definition: (a) "*after the expiration of any applicable Grace Period*"; and (b) "*failure by a Reference Entity to make, when and where due, any payments*".

As noted above, the necessary implication of management's statement on the 16/5 Call regarding current negotiations with the Lender to postpone repayment of the Bilateral Loan is that the Bilateral Loan must not have been repaid on its due date of repayment of 11 May 2018.

However, as the DC did not have a copy of the Bilateral Loan, it was not possible for the DC to ascertain definitively whether there was a contractual grace period applicable to payments under the Bilateral Loan (or whether the minimum three business day grace period imposed by the Definitions applied)⁵ and, if a contractual grace period did apply, whether it had expired or indeed had been extended by the Lender. Furthermore, the DC was aware of the press release issued by the Reference Entity on 22 May 2018 (the **22/5 Press Release**)⁶ pursuant to which it stated that the Bilateral Loan "*has been regularly repaid within the terms set by [the Lender]*". The DC was of the view that this statement was consistent with the inference from the 16/5 Call that the Bilateral Loan was not repaid on 11 May 2018 but the words "*has been regularly repaid within the terms set by [the Lender]*" suggested that either the Reference Entity had repaid the Bilateral Loan by 22 May 2018 in line with previous scheduled repayments, or it would repay the Bilateral Loan within the applicable grace period (which may or may not have been extended by the Lender), or that the Lender had agreed to extend the repayment date itself. In other words, the Reference Entity had indirectly confirmed that it is not (currently) in payment default under the terms of the Bilateral Loan. On this basis the DC did not think there was sufficient information to say that a Failure to Pay Credit Event had occurred because it was unable to confirm whether any applicable Grace Period had expired and if so, that the Reference Entity had not repaid the Bilateral Loan.

³ Section 1.35(a) of the 2014 Definitions/Section 3.5(a) of the Updated 2003 Definitions.

⁴ Section 1.35(c) of the 2014 Definitions/Section 3.5(d) of the Updated 2003 Definitions.

⁵ Section 1.46(c) of the 2014 Definitions/Section 1.12(a)(iii) of the Updated 2003 Definitions.

⁶ The 22/5 Press Release is available [here](#)

Indeed, the DC thought that the most reasonable inference was that a Failure to Pay Credit Event had not occurred on the basis that the 22/5 Release published by the Reference Entity implied that the Reference Entity was either still within the contractual grace period or that it had agreed with the Lender that the relevant repayment date had been extended such that repayment was not actually currently due.⁷ The DC was unable to confirm definitively that no Failure to Pay had occurred but based on the information available to it, the DC felt it was reasonable to determine that a Failure to Pay Credit Event had not occurred.

The DC noted that its determination has been made based on public information currently available. If new information comes to light in the future, it is open to market participants to re-submit a Credit Event request to the DC Secretary within the 60 day lookback period.

⁷ The DC noted that any such extension could not in any event amount to a Restructuring Credit Event: based on its understanding from publicly available information, the Bilateral Loan would not satisfy the Multiple Holder Obligation requirement (see Section 4.10 of the 2014 Definitions and Section 4.9 of the Updated 2003 Definitions).