Evolution of the CDS Market: Liability Management Exercises, Credit Events and the Future of Asset Package Delivery

Overview: Forthcoming changes affecting CDSs and CLNs referencing European (and potentially North American) corporates

A run of high-profile corporate events, especially those affecting Intrum AB, Altice France SA and Ardagh Packaging Finance PLC, has exposed difficulties in how the credit default swap (**CDS**) market interprets specific actions and handles uncertainties, especially where liability management exercises (**LMEs**) are involved. The new Credit Derivatives Governance Committee (the **GC**) that was established in July 2025 is moving to address some of those difficulties, with changes that could materially affect how CDSs and credit-linked notes (**CLNs**) referencing European (and potentially North American) corporates are documented, priced and settled.

These developments are directly relevant to you if your business trades, hedges, prices or structures products referencing corporate credit risk (whether as a dealer, an investor, an issuer or arranger of CLNs, a buyer or seller of bilateral CDS protection, or a corporate treasury managing counterparty exposure). In this briefing, we explain how the market has grappled with the issues, and set out key areas to consider for your existing positions and new trades.

The Appendix sets out a summary table of some recent Credit Events relevant for this briefing. Capitalised terms used but not defined in this briefing have the meaning ascribed to them in the 2014 ISDA Credit Derivatives Definitions (the **2014 Definitions**).

1. The problem: LMEs are straining the CDS trigger and settlement mechanism

Many of the difficulties arise from LMEs and the stage the LME process has reached at the time a Credit Event is triggered. LME frameworks (e.g. in restructuring support agreements) often set out various different options depending on what debtholder consent thresholds are reached from time-to-time, such as whether to have exchange offers or debt maturity extensions, and aggressive LME techniques pioneered in the US are increasingly being used in Europe, such as those described in Box 1. There is also an important distinction between out-of-court restructurings and court-driven insolvency procedures. In all cases, consequences for CDSs turn heavily on the facts. The relevant Credit Derivatives Determinations Committee (**DC**) that makes decisions in relation to specific events often needs to exercise judgment based on incomplete information.

Three issues dominate for CDSs: (a) what information is publicly available to trigger a Credit Event; (b) precisely when the Credit Event is triggered; and (c) what Deliverable Obligations are actually available for delivery at that time as well as when the Final List is published and the time settlement is required following an Auction.

Box 1: Some LME Strategies

Drop-downs – Where an entity moves assets away from itself (typically to an unrestricted subsidiary) resulting in fewer assets to service its debt.

Uptiering – Entity agrees new debt with some but not all existing creditors, so creditors who did not participate are pushed down the payment priority.

Double-dipping – Debt restructured so a particular creditor has separate independent claims against more than one entity in group.

For more background see our previous briefing Lender on lender violence: Uptier Priming Debt.

The most prominent CDS scenarios affected by LMEs are:

(i) ***Restructuring depletes stock of Deliverable Obligations (where Restructuring is a Credit Event)***: An event that triggers the Restructuring may also simultaneously affect the available Deliverable Obligations, which could become undeliverable or have a lower Outstanding Principal Balance if delivered. This was considered in the context of Ardagh Packaging Finance PLC, where the DC determined that actions affecting bonds that triggered a Restructuring Credit Event were not sufficient to reduce the Outstanding Principal Balance to zero.

(ii) ***Out-of-court restructurings that may not trigger a Credit Event (where Restructuring is not a Credit Event)***: In this scenario, an out-of-court restructuring would not directly trigger a Credit Event, though there are often other Credit Events that could be triggered at some point in the restructuring process (e.g. a Failure to Pay on a bond that is in the process of being restructured but where the restructuring is not yet legally binding, the forbearance for NFE Financing LLC in 2025 being an example).

(iii) ***Pre-packaged bankruptcy filings (pre-packs)***: Where a filing is made that triggers a Bankruptcy Credit Event but any debt exchange/amendment is accelerated so that a binding exchange or amendment is effected before CDS settlement; this may result in an Obligation that would previously have been a Deliverable Obligation no longer being Deliverable. This was particularly relevant for Greece in 2012 and influenced the Asset Package Delivery provisions that were first added to the 2014 Definitions, though as Greece is a Sovereign Reference Entity it used a collective action clause instead of a pre-pack to effect a mandatory exchange. Note also that despite pre-packs being designed to progress quickly based on terms agreed with a significant percentage of debtholders prior to the filing, there is an increasing trend for pre-packs to take considerably longer to execute than initially expected.

(iv) ***Lock-up agreements***: These are almost invariably used now and provide that debtholders who sign up to them will agree to proposed changes and to vote for consent solicitations (e.g. exchange offers), often with standstills/forbearances included. They can significantly reduce the pool of Deliverable Obligations available in the market. The relevant European DCs sought to mitigate this in the Intrum AB and Altice France SA Auctions – in the former, locked-up Deliverable Obligations could be specified where the recipient was able to take delivery, and in the latter the original draft Auction Settlement Terms extended that to provide for cash settlement if the recipient was unable to take delivery, though a surprise compression of the Altice France SA exchange window meant that a Composite Package was used instead (this is delivery of the package of assets with cash fallback for any component that could not be delivered). This is what led to the latest proposal to apply Asset Package Delivery to European Corporates and potentially to North American Corporates.

(v) ***Large amounts of debt held by investors with CDS positions***: There is always a concern that debtholders with CDS positions could block proposed restructurings that would otherwise be good for unhedged debtholders. Ad hoc bondholder committees are often formed of bondholders with similar interests (the bond issuer is not a party to these committees), and in some cases they enter into cooperation agreements among themselves to protect their interests and block certain LME strategies, though there are antitrust/competition law considerations there. However, in recent LMEs, many consent thresholds seem to have been achieved quite easily, perhaps through aggressive LME tactics such as early-bird fees or the debtholder fear of losing out in a coercive exit consent solicitation (the Anglo Irish/Assénagon case in 2010 is the classic example) or cross-class cramdown, though it is also possible that most of the debt in those recent examples was not held by investors with CDS positions.

Restructuring is typically a Credit Event for European corporates but not for North American corporates, reflecting the frequent use of Chapter 11 in the US or the Companies' Creditors Arrangement Act in Canada as the trigger preceding a restructuring instead. However, the cost of Chapter 11 proceedings is prompting some US debtors to look to out-of-court restructurings (e.g. as initially tried by DISH DBS Corporation in 2026) or drive the restructuring process in other jurisdictions (e.g. New Fortress Energy Inc. and NFE Financing LLC, which pursued a UK Part 26A restructuring plan) with subsequent Chapter 15 recognition in the US where necessary. Furthermore, the complexity of international corporations and their creditor profiles (e.g. the specific jurisdictions of the debt issuers/guarantors, the jurisdictions of the creditors and whether they are specialist distressed debt investors, as well as the unpredictability of the negotiation process) means that other restructuring strategies may be optimal for specific corporations, and many countries have substantially revised their insolvency laws to facilitate restructurings and debtor-in-possession financings. These alternatives to Chapter 11 may well become more common – a trend worth monitoring given its potential knock-on effects.

2. CIT principle in DC Rule 3.2(d): not quite Asset Package Delivery by another route

The concept of Asset Package Delivery was introduced by the 2014 Definitions. In broad terms, it provides that if a particular Deliverable Obligation is exchanged for other assets, including cash, then a buyer of protection can deliver the resulting assets in lieu of the Deliverable Obligation even if they would not otherwise have been Deliverable. It resolves many settlement problems, but its application to CDSs was limited because of moral hazard concerns – principally, the risk that a buyer of protection with advance knowledge of a restructuring could benefit unduly. Currently, Asset Package Delivery only applies in CDSs referencing European financial corporates (for either (a) a Governmental Intervention or (b) a Restructuring of the Reference Obligation) or Sovereigns (a Restructuring of a Package Observable Bond).

However, DC Rule 3.2(d) is being used with increasing frequency to permit delivery of assets received in an exchange in situations where Asset Package Delivery does not apply, provided that a buyer of protection was able to immediately deliver the original Deliverable Obligation as soon as the Credit Event occurred. This is often referred to as the CIT principle as it was first used in Auction Settlement Terms for CIT Group Inc. in 2009. It is referred to as delivery of a "package of assets" in the relevant Auction Settlement Terms, though the Altice France Auction Settlement Terms introduced a more detailed concept of the Composite Package.

3. Private information

A further complication is whether the information underpinning the DC's decision is public at all. Private loans have proliferated in recent years, and the loan documents are often not available even if the existence of the loan is revealed in, for example, annual accounts and would otherwise have constituted an Obligation and a Deliverable Obligation (e.g. Noble Group Limited in June 2017).

Furthermore, loan documentation is often confidential (and high-yield bond documentation often is as well), and determinations are currently based on the DCs' best judgments based on press releases or other information that is actually public and which may not contain sufficient detail.

4. The Governance Committee's July 2026 mandates

On 7 July 2026, the GC resolved to mandate a technical forum working with ISDA to consider implementing Asset Package Delivery for all Standard European Corporate Transaction Types (not just high-yield European corporates as suggested in the 27 April 2026 GC meeting), and potentially for the Standard North American Corporate

Box 2: Selected Recent Changes

April 2024: Linklaters report on function, governance and membership of DCs. This is guiding changes.

Transaction Type as well. If taken forward, this would resolve most of the settlement uncertainties described above, and it will be worth watching whether the moral hazard concerns that previously limited the scope of Asset Package Delivery resurface in that debate.

In parallel, the GC has mandated draft changes to the DC Rules that would create an explicit mechanism for private or confidential information to be provided to DCs to assist with Credit Event and deliverability determinations, subject to the confidentiality restrictions in the underlying documentation and applicable law. The GC anticipates that, where the documentation for a Deliverable Obligation on a Final List is not public, any auction will follow market practice for the cash market, with interested institutions able to review the relevant documentation – including, where required, by signing a non-disclosure agreement.

The timing for implementing these changes is not yet known. They form part of a broad set of changes to the CDS market highlighted in Box 2.

July 2025: Governance Committee established to direct development of DCs and the CDS market.

December 2025: Interpretative guidance from Ardagh Packaging decisions – no formal rule change, but likely to influence future DC decision-making.

March 2026: New SRO List selection procedure adopted (iTraxx Reference Entities initially).

April 2026: Draft amendments to DC Rules published, not yet finalised.

June 2026: Appointment of S&P Global Market Intelligence as the new DC Administrator – new DC website expected in due course.

July 2026: Technical forum mandated to consider wider application of Asset Package Delivery.

July 2026: Further changes to DC Rules mandated, particularly the private information mechanism.

5. Not a complete fix: certain LME actions remain a live risk

These changes are not a panacea for every LME-related settlement issue. For example, drop-down transactions where a Reference Entity moves assets away from itself (typically to an unrestricted subsidiary) can still remove value from the Reference Entity and affect CDS valuation. Many of these would not affect a simple CDS hedge where a buyer of protection holds a bond or loan of the Reference Entity that would constitute a Deliverable Obligation and has bought CDS protection on the full principal of that bond or loan (i.e. the buyer of protection can still deliver the relevant Deliverable Obligation with same Outstanding Principal Balance even if it might be worth considerably less than it was before the LME). However, other positions and their hedges might not have clearly offsetting movements, such as a long tranched index position where the buyer of protection has delta hedges in the single name CDSs referencing individual Reference Entities; in that case, the occurrence of a drop-down for a particular Reference Entity might cause a discontinuous jump in the delta for the CDS referencing that Reference Entity.

DISH DBS Corporation illustrates the point: a drop-down occurred on 10 January 2024, long before the eventual Credit Event on 30 June 2026. The lengthy gap between a value-affecting corporate action and the Credit Event itself means CDS pricing can be affected well before, and independently of, any formal determination affecting CDS payoffs.

6. What should market participants consider now?

Participants in the CDS and CLN markets should assess how these prospective changes affect their existing and future transactions. While buyers of credit protection naturally look for protection that works in all likely scenarios, it is not a straightforward matter to expand CDS terms as the sellers of that credit protection may need to avoid hedging mismatches, and this results in a drive to find a market-wide solution. It is not yet clear whether an ISDA Protocol will be used to implement the Asset Package Delivery changes. It may be prudent to build "future-proofing" provisions into CLNs and other CDS-referencing documentation, allowing terms to be updated to track market developments as they are finalised – many CLN issuance programmes and templates have already evolved to include future-proofing provisions so it may simply be a case of reviewing those provisions to check that they are broad enough to capture the scope of the anticipated changes.

If no ISDA Protocol is involved, there may be consequential bifurcation of the CDS market (i.e. existing CDSs without Asset Package Delivery differing from new CDSs with Asset Package Delivery), and even if an ISDA Protocol is involved not all existing CDSs would be amended (e.g. bespoke CDSs, and also CLNs). The main concern is usually to ensure that there are no hedging mismatches, which will need to be considered in detail when the final proposal is published.

Separately, the DCs' ability to consider private information may increase the pool of available Deliverable Obligations. This could affect pricing, particularly where a newly eligible obligation turns out to be the cheapest-to-deliver, with consequences for both existing positions and how new trades are priced and hedged.

7. Where we can help

We would be glad to discuss:

- Drafting or reviewing generic provisions in CDSs and CLNs to accommodate anticipated Asset Package Delivery and DC Rule changes.

- Advising on confidentiality and NDA considerations where private information may be shared with a DC or market participants in connection with an Auction. This is particularly relevant for loans.

- Analysing specific events to determine difficulties/uncertainties in how CDSs (distinguishing hedging from speculative exposures) and CLNs might be triggered or settled, including possible hedging mismatches, and providing checklists of events to watch out for.

- Advising ad hoc bondholder committees or debtholders generally (either with or without CDS positions) on the application of potentially relevant insolvency laws and restructuring plans, including reviewing bond/loan documents for consent thresholds and deliverability.

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Appendix
Comparison of Some Recent Credit Events

Reference Entity	Index	Credit Event Resolution Request Date (CERRD)	Credit Event Trigger	Key LME/Deliverable Obligation Issues	CERRD → Auction
Intrum AB – Swedish	iTraxx Europe Crossover	18 Nov 2024	Bankruptcy Pre-pack Chapter 11 filing	73% of Deliverable Obligations subject to lock-up, concerns over availability for Auction so locked-up debt could be Delivered provided recipient locked-up too. DC Rule 3.2(d) applied for delivery of "package of assets".	59 days
Altice France SA – French	iTraxx Europe Crossover	27 May 2025	Bankruptcy Pre-pack request opening of accelerated safeguard proceedings	Had sufficient debtholder consents for out-of-court restructurings, but requested opening of accelerated safeguard proceedings in France (necessary for cross-class cramdown, particularly for New York law governed notes). 95+% of Deliverable Obligations subject to lock-up, so initial proposal to allow delivery of locked-up bonds with cash settlement if any part of the chain could not accept, but late Altice France announcement on 19 August 2025 led to extensive Composite Package definition based on DC Rule 3.2(d).	91 days
Ardagh Packaging Finance PLC – Irish	iTraxx Europe Crossover	7 Oct 2025 (determined 14 Dec 2025)	Restructuring (Mod Mod R) Press release suggesting binding change	~50 DC meetings considering questions. External Review Panel made a notable decision that a 7 October 2025 press release constituted a binding restructuring triggering a Restructuring Credit Event – they distinguished conditions to implementation from conditions precedent. Separately, the DC Resolved there is a difference between a binding agreement that triggers Restructuring CE and one that reduces the Outstanding Principal Balance. Deliverable Obligations exchanged long before Auction, so lock-up no longer relevant. Composite Package based on DC Rule 3.2(d) applied. The overall analysis increases the chances of future restructurings constituting a Restructuring Credit Event but not affecting deliverability of a restructured Deliverable Obligation.	155 days

Reference Entity	Index	Credit Event Resolution Request Date (CERRD)	Credit Event Trigger	Key LME/Deliverable Obligation Issues	CERRD → Auction
NFE Financing LLC – US	CDX.NA.HY	21 Nov 2025	Failure to Pay Forbearance agreement	Only one Deliverable Obligation, which was the 12% notes issued in 2024, and some were locked-up under a different forbearance agreement than the one that led to the Credit Event. Part of the New Fortress Energy Inc. group, subsequent actions joined with the parent company and described in following row.	54 days
New Fortress Energy Inc – US	CDX.NA.HY	5 Jan 2026	Failure to Pay Forbearance agreement	Parent company of the group. In 2024, triggered a Successor determination when it exchanged several existing notes for NFE Financing LLC notes (two Successors – New Fortress Energy Inc. and NFE Financing LLC). Two Deliverable Obligations, neither subject to lock-up provisions. Yet another different forbearance agreement led to the Credit Event. There was subsequently a Restructuring Support Agreement dated 17 March 2026. Eschewed Chapter 11 for UK Part 26A restructuring plan, though this took place well after the Credit Event (no Chapter 15 filing for US recognition by parent company as it wanted to preserve its Nasdaq listing, though two subsidiaries did file).	37 days
DISH DBS Corporation – US	CDX.NA.HY	30 Jun 2026	Bankruptcy Pre-pack Chapter 11 filing	The Restructuring Support Agreement dated 19 March 2026 provided for either an out-of-court restructuring or a Chapter 11 filing. 82% of the debtholders had agreed to this at the time. However, in the end DISH DBS Corporation elected for Chapter 11 filing as they did not have sufficient buy-in from debtholders by the relevant cut-off date (the day before a large bond was due to mature on 1 July 2026). Some Deliverable Obligations locked-up.	35 days

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