

NAVIGATING CDS IN DISTRESSED EUROPE: LESSONS FROM ARDAGH AND ALTICE

INTRODUCTION

The credit default swap (CDS) market is facing renewed scrutiny as recent credit events expose growing tensions between the contractual design of CDS and evolving restructuring practices. Once seen as a predictable, rules-based mechanism for transferring credit risk, the increasing use of out-of-court restructuring tools and creditor lock-ups is challenging assumptions around the reliability of CDS outcomes.

In this article, we outline the core features and mechanics of CDS, and discuss how legal documentation, governance and the CDS settlement process interact with market realities as showcased in recent high-profile credit events such as Altice and Ardagh.

WHAT IS A CDS?

A CDS is a derivative contract allowing market participants to buy or sell protection against the credit risk of a third-party reference entity (single-name CDS) or a CDS index. This note focuses on single-name corporate CDS, which are documented under an ISDA Master Agreement with a CDS confirmation incorporating the 2003 or (more often) 2014 Credit Derivatives Definitions (the **"2014 Definitions"**).

In return for the CDS seller assuming the credit risk of the reference entity, the CDS buyer will pay a periodic premium and upfront amount (a percentage of the CDS notional) which will be priced to reflect the creditworthiness of that reference entity. Upon the occurrence of a credit event, CDS settlement typically references the value of certain qualifying (deliverable) obligations of the reference entity set via an auction process.

While CDS contracts are often used to hedge exposure to the credit risk of the reference entity, they are also used as a standalone credit trading instrument. Neither party needs to own the underlying debt of the reference entity.

HOW ARE DETERMINATIONS MADE?

The ISDA Credit Derivatives Determinations Committees (DCs) are regional panels comprised of dealer and non-dealer members including representatives from major banks and investment firms. The DCs make binding determinations on key questions impacting the CDS market, such as whether a credit event has occurred and if an auction should be held to determine the settlement price of CDS contracts.

CREDIT EVENTS

The credit events applicable to corporate CDS contracts in Europe are as follows:

Failure to Pay:

A "Failure to Pay" will occur if the reference entity fails to make

any payments when and where due, in an aggregate amount of not less than the Payment Requirement (USD 1 million or equivalent) under any "borrowed money" obligations. The 2014 Definitions give effect to any applicable grace period in the underlying debt documentation or, if no contractual grace period applies, a three-business day grace period is implied.

Failure to Pay has traditionally been regarded as the most straightforward credit event, although its simplicity has been exploited through "manufactured" defaults agreed between the reference entity and its creditors (Hovnanian (2018)). In response, ISDA published "Narrowly Tailored Credit Event" provisions in 2019 which introduced a credit deterioration requirement, such that a Failure to Pay credit event only triggers if it results from a deterioration in the creditworthiness or financial condition of the reference entity.

Bankruptcy:

The definition of "Bankruptcy" contains several alternative triggers, including where the reference entity is dissolved, declares itself insolvent, has a resolution passed for its winding-up or liquidation or becomes subject to the appointment of administrator. However, the two broader triggers that are particularly relevant for distressed European corporates are:

- the Reference Entity makes a general assignment, arrangement, scheme or composition with or for the benefit of its creditors generally, or such a general assignment, arrangement, scheme or composition becomes effective (Section 4.2(c)); and
- the Reference Entity institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other similar relief under any bankruptcy or insolvency law or other law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation, or (ii) is not dismissed, discharged, stayed or restrained in each case within thirty calendar days of the institution or presentation thereof (Section 4.2(d)).

Applying these limbs to a particular set of facts for a reference entity can be complex and require analysis. By way of illustration, the EMEA DC has determined that a Chapter 11 filing constitutes a credit event under limb (d) on the basis that the entity has instituted a proceeding seeking a judgment of insolvency or bankruptcy (Intrum (2024)). Similarly, French accelerated safeguard proceedings constitute "similar relief" for purposes of limb (d) (Altice France (2025)). Filing an English scheme or

restructuring plan should not alone constitute a "Bankruptcy" (at least until sanctioned), but a Chapter 15 petition filed in the U.S. to support an English scheme can trigger a Bankruptcy credit event (Matalan (2020)).

Restructuring:

A "Restructuring" credit event may be triggered if, due to the deteriorating creditworthiness or financial condition of the reference entity, one or more of the following occurs in relation to an aggregate amount of not less than the Default Requirement (USD 10 million or equivalent) and such event is not expressly provided for under the terms of the relevant obligation: (i) a reduction in the rate or amount of interest payable, (ii) a reduction in principal or premium, (iii) a postponement or deferral of payment, (iv) a subordination in ranking or (v) a non-permitted change in the currency of any payment.

The change must be binding on all holders under one of three alternative limbs: Limb 1: it occurs in a form that binds all holders of the obligation; Limb 2: it is agreed between the reference entity or a governmental authority and a sufficient number of holders to bind all holders; or Limb 3: it is announced (by the reference entity or a governmental authority) in a form that binds all holders.

Restructuring credit events are relatively uncommon in the European CDS market. Unlike Bankruptcy or Failure to Pay, which tend to produce clearer and more objective triggers, the definition of Restructuring is more nuanced, requires evidence of genuine credit deterioration and excludes many routine amendments or consensual refinancings. However, recent developments in the European CDS market have highlighted the circumstances in which a Restructuring credit event can be triggered (see discussion on Ardagh below).

CDS SETTLEMENT

When a credit event is triggered, the CDS contract must be settled to determine the payout owed to the CDS buyer. The settlement process establishes a recovery value for certain qualifying or "deliverable" obligations of the reference entity, with the CDS seller paying the buyer the difference between par and that recovery value. The 2014 Definitions and standard auction settlement terms published by the DC seek to provide objective criteria for identifying the deliverable obligations and the auction process with a view to promoting consistent outcomes in the market.

Auction settlement is the standard settlement method for CDS contracts that incorporate the 2014 Definitions. If an auction is not held (because traded CDS notional on the reference entity is too low), then physical settlement applies as the fallback. In physical settlement, the CDS buyer delivers qualifying (deliverable) obligations with a face amount equal to the CDS notional in exchange for a payment equal to the CDS notional (i.e. the CDS buyer receives par).

In an auction, the market determines an auction final price for deliverable obligations, and the CDS seller pays the difference

between par and the auction final price on the CDS notional (i.e. compensating the CDS buyer for loss on par). In addition, CDS market participants may replicate physical settlement by electing to participate in the auction (up to their net CDS position) by submitting requests to either buy (for a CDS seller) or sell (for a CDS buyer) deliverable obligations at the auction final price.

Auction settlement follows a two-stage process:

- In the first stage, the "Inside Market Midpoint" (IMM) will be determined based on bid and offer quotes submitted by dealer banks for a reference notional of the deliverable obligations. The IMM is set by discarding crossing bid/offer quotes and calculating an average using 'best half' (i.e. highest bids and lowest offers) of the remaining quotes. Dealers also submit physical settlement requests – i.e. to buy or sell deliverable obligations (at the auction final price), to determine the net open interest (i.e. difference between supply and demand).
- In the second stage, depending on the direction of open interest, auction participants submit limit orders to buy or sell (as applicable) in an amount up to the open interest. For instance, if the open interest was to sell, orders to "buy" would be used starting with the highest, and the last limit order used to fill the open interest is the auction final price. This final price is subject to a "cap" (i.e. maximum differential) as compared against the IMM (to avoid off-market limit orders being submitted).

DELIVERABLE OBLIGATIONS

Only certain qualifying or "deliverable" obligations of the reference entity can be used in connection with the settlement of the CDS contract (i.e. delivered to the protection seller under physical settlement or subject to bidding in a CDS auction). These deliverable obligations are determined based on criteria and characteristics set out in the 2014 Definitions, as applicable to the relevant CDS contract. For instance, in order to qualify as a deliverable obligation, the instrument must not be contractually subordinated to the reference obligation specified in the CDS contract.

Following the occurrence of a credit event, the DC will compile a list of deliverable obligations of the reference entity and market participants may propose obligations to be included on the final list (subject to supporting publicly available information).

LESSONS FROM RECENT RESTRUCTURINGS IN THE EUROPEAN MARKET

The recent European restructurings involving Altice and Ardagh have highlighted the growing tension between increasingly sophisticated liability-management techniques and the static framework of the 2014 Definitions. As restructuring tools evolve, the CDS market is being pushed into scenarios its documentation was never designed to accommodate. These cases also demonstrate how the behaviour of creditors holding both CDS and debt can materially influence not only the likelihood and timing of a credit event but also the strategic direction of the restructuring itself. For example, CDS protection sellers may be incentivised to

support transactions that eliminate the reference entity's debt, creating orphan CDS with little or no remaining default risk, or that extinguish deliverable obligations that would otherwise be available to determine a pay-out for CDS buyers upon a credit event. By contrast, CDS protection buyers may favour a non-consensual restructuring that is more likely to trigger their protection. Prolonged restructuring timelines introduce an additional layer of risk: CDS contracts can simply expire before a credit event is triggered or an auction is held, leaving protection buyers exposed despite having paid for cover. Taken together - and compounded by the increased use of creditor lock-ups and cooperation agreements - these dynamics underscore why recent cases offer important lessons for restructuring lawyers navigating a market where incentives, documentation and restructuring mechanics can be increasingly misaligned.

Credit event trigger on LME

On **Ardagh**, which has proven to be one of the most contested credit events in recent years, the central question was - at what point is an out-of-court restructuring agreed "between the reference entity ... and a sufficient number of holders to bind all holders", thereby triggering a Restructuring credit event (under Limb 2 referenced above).

In July 2025, Ardagh published a Transaction Support Agreement ("**TSA**") relating to an "Agreed Recapitalization Transaction" involving an exchange or amendment of its senior secured notes (SSNs) into "new second lien takeback paper" and the exchange of its senior unsecured notes (SUNs) and senior secured toggle notes (PIKs) into equity interest in the Ardagh group. The TSA envisaged that the Agreed Recapitalization Transaction would be implemented by way of consents obtained through a consent solicitation process (with the relevant indentures for each of the SSNs, SUNs and PIKs requiring consent from holders of 90% of the principal amount). Following its publication, Ardagh reported that an increasing number of debt holders had acceded to the TSA and went on to launch the consent solicitations.

This resulted in a question being submitted to the DC in October 2025 (following launch of the consent solicitations but before completion of the recapitalisation transaction) asking if a Restructuring credit event had occurred. Following deliberations, the DC could not reach the required supermajority consensus, and the question was referred to an external review panel. This external review panel concluded that a Restructuring credit event had indeed occurred, based on the combination of the TSA and the launch of consent solicitations with the requisite majorities of debtholders already committed. The panel rejected the argument made by some that Limb 2 requires actual implementation of the amendments before there can be a binding agreement. Instead, all holders can still be bound by the agreement of the requisite majority (considering the collective active clauses in the existing bond indentures) even if there are outstanding conditions to implementation.

Equitisation of deliverable obligations

The other key question on Ardagh was whether debt obligations bound to equitisation pursuant to an out-of-court restructuring are deliverable for the purposes of CDS settlement. Ardagh's recapitalization converted the SUNs into new equity. To qualify as deliverable obligations for the purposes of CDS settlement, such obligations must have had an "Outstanding Principal Balance" of "greater than zero" as of the credit event resolution request date. Arini challenged the inclusion of the SUNs on the list of deliverable obligations on the basis that the entire principal balance of the SUNs could "pursuant to the terms of the obligation[s] . . . be reduced as a result of the effluxion of time or the occurrence or non-occurrence of an event or circumstance"—namely, the closing of the recapitalisation transaction which, according to the external review decision, was already held to be binding on all holders so as to trigger a Restructuring credit event. Exclusion of the SUNs from the list of deliverable obligations would have undermined the value of the Ardagh CDS to protection buyers.

Following responses from other market participants, the DC rejected the Arini challenge and held that the SUNs were deliverable. An agreement to support a transaction that will restructure obligations and the existing terms of those obligations are two different things - and the definitions of "Restructuring" (for the purpose of determining credit event trigger) and Outstanding Principal Balance (for the purpose of determining what obligations are deliverable) have separate meanings and functions. In this context, the DC noted that prior to the completion of the Ardagh recapitalisation on 12 November 2025, holders of the obligations held a claim against the reference entity equal to the Outstanding Principal Balance of their notes - as would have been acknowledged by a court in any insolvency proceeding at that time.

Evolution of Auction Settlement Terms

Given the Ardagh SUNs were exchanged to equity before the CDS auction could take place, the DC was required to invoke Section 3.2(d) of the DC Rules. This allows it to adjust auction terms and the final list of deliverable obligations in order to avoid or mitigate undue prejudice to CDS buyers or sellers. The DC used this discretion by permitting delivery of the "composite package" of assets replacing the SUNs, namely equity in the Ardagh group.

This follows a similar approach taken by the DC in the CDS auction for **Altice France** in 2025. In that case, the vast majority of bonds issued by Altice France were locked up under a restructuring framework and additional creditor cooperation agreements meaning they could not be transferred - thereby hindering operation of the CDS auction. In response, the DC ultimately decided to hold the auction as scheduled but, where a CDS buyer elected to deliver bonds to the CDS seller (to replicate physical settlement) and such delivery could not occur because of the lock-up restrictions, the CDS buyer was instead permitted to deliver the post-restructuring "composite package" generated under

Altice's accelerated safeguard plan. That package, comprising cash amounts, replacement notes and equity, was designed to replicate the economic value of the bonds that could not change hands.

For Ardagh CDS, the 11 March 2026 auction settled at a final price of 33.875%. In substantive terms, the result broadly aligns with where Ardagh's SUNs had traded before being equitised, meaning protection CDS buyers ultimately received a payout (approximately 66% on face amount) that appears defensible given the company's distressed fundamentals. However, only four dealers participated — far fewer than the typical seven or eight — leaving residual concerns of price-setting rather than robust price discovery, especially given bespoke composite-package settlement.

THE FUTURE OF CDS DOCUMENTATION AND PRACTICE

The combined experience of Ardagh and Altice shows that the European CDS framework is now being tested by restructuring tools and liability-management tactics that were not as prevalent when the 2014 Definitions were drafted. Both cases have exposed how out-of-court processes can make it more challenging to

identify the moment that a restructuring becomes binding and have the potential to extinguish or immobilise deliverable obligations before an auction can take place, requiring the DC to stretch its discretionary powers in order to preserve settlement. If CDS is to remain a reliable hedge and trading instrument, the market will need to confront these challenges. In practice, that likely means revisiting aspects of the market-standard documentation and seeking more guidance from ISDA so that future determinations are more predictable and less dependent on ad hoc interpretation.

Looking ahead, the key question will be whether the CDS framework can evolve quickly enough to keep pace with the increasingly sophisticated restructuring strategies emerging in the European credit market.

Weil's Structured Finance & Derivatives team is at the forefront of CDS-related issues arising in European restructurings. Working seamlessly with our market-leading Restructuring practice, we help clients manage the full spectrum of CDS trigger and settlement issues arising in complex workouts and liability management transactions.



ANDREW LAUDER

+44 20 7903 1516
andrew.lauder@weil.com



MAYA SAJEEV

+44 20 7903 1995
maya.sajeev@weil.com



STEVEN ONG

+44 20 7903 1041
steven.ong@weil.com