



HERBERT
SMITH
FREEHILLS

4 March 2022

TXU EUROPE GROUP Plc

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE ENERGY TRADING LIMITED

(in Administration and subject to a company voluntary arrangement)

TXU EUROPE POWER LIMITED

(in Administration and subject to a company voluntary arrangement)

TXU UK LIMITED

(in Administration and subject to a company voluntary arrangement)

EASTERN ELECTRICITY HOLDINGS LIMITED

(in Administration and subject to a company voluntary arrangement)

TXU EUROPE MERCHANT PROPERTIES LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE MERCHANT GENERATION LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE POWER DEVELOPMENT LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE (PARTINGTON) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE POWER PRODUCTION SERVICES LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU (UK) HOLDINGS LIMITED

(in Administration and subject to a company voluntary arrangement)

ENERGY HOLDINGS (NO. 6) LIMITED

(in Administration and subject to a company voluntary arrangement)

ANGLIAN POWER GENERATORS LIMITED

(in Administration and subject to a company voluntary arrangement)

PETERBOROUGH POWER LIMITED

(in Administration and subject to a company voluntary arrangement)

TXU EUROPE POWER SERVICES LIMITED

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TXU DIRECT SALES LIMITED

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TXU EUROPE NATURAL GAS (TRADING) LIMITED

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(in Liquidation and subject to a company voluntary arrangement)

TXU GERMANY LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE OVERSEAS FINANCE LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE LEASING (5) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

PRECIS (2264) LIMITED

(in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE RENEWABLE GENERATION LIMITED

(in Liquidation and subject to a company voluntary arrangement)

EASTERN GROUP FINANCE LIMITED

(in Liquidation and subject to a company voluntary arrangement)

**NOTICE OF MODIFICATION TO COMPANY
VOLUNTARY ARRANGEMENTS
(dated 10 January 2005 under Part I of the
Insolvency Act 1986)**

MODIFICATION DATE: 4 MARCH 2022

Herbert Smith Freehills LLP

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PART A

1. BACKGROUND INFORMATION

- 1.1 Terms defined in the company voluntary arrangements between each CVA Company and its CVA Creditors (issued on 10 January 2005 and approved by the creditors and the members of each of the relevant CVA Companies at meetings held on 28 January 2005) shall, unless the context otherwise requires, have the same meaning when used herein.
- 1.2 The CVA Companies entered into the CVAs in order to, amongst other things:
 - 1.2.1 compromise numerous disputes between each of the CVA Companies; and
 - 1.2.2 create a mechanism to distribute the assets of the CVA Companies to the CVA Creditors.
- 1.3 Each CVA is in an identical form¹.
- 1.4 The termination of the CVAs has been delayed by the emergence of (i) asbestos related liabilities; and (ii) pension related liabilities, at TXU UK and thus uncertainty over the level of the ultimate liabilities of TXU UK Limited (in administration and subject to a company voluntary arrangement) ("**TXU UK**").
- 1.5 However, in March 2021, following an application to Court by the Joint Administrators of TXU UK and the Supervisors of its CVA, the Court ordered that, pursuant to the terms of the CVA, the Supervisors may proceed to make a final Distribution no earlier than 5pm on 30 March 2021 without being obliged to reserve for potential claims which could be brought against TXU UK in the future ("**Potential Future Claims**").
- 1.6 Further, on 1 September 2021, the Office Holders of TXU Europe Group Plc (in liquidation and subject to a company voluntary arrangement) ("**TXUEG**"), TXU UK and TXU Direct Sales Limited (in liquidation and subject to a company voluntary arrangement) settled the dispute relating to mistaken payments following the decision of Mr Justice Newey in Re TXU Europe Group Plc [2011] EWHC 2072 (Ch).
- 1.7 The Supervisors of TXUEG and of the twenty-seven other CVA Companies made a final Distribution to all CVA Creditors of those CVA Companies on 2 September 2021.
- 1.8 On 13 December 2021, the Office Holders of TXUEG entered into an assignment agreement with, amongst others, the Office Holders of The Energy Group Limited (in administration and subject to a company voluntary arrangement) ("**TEG**") pursuant to which TXUEG assigned all of its rights and interest in certain claims to TEG.
- 1.9 The Office Holders of the CVA Companies are now, subject to the resolution of the issues described in this notice, in a position to terminate all of the CVAs.

2. UNCLAIMED TOP-UP PAYMENTS

- 2.1 As part of the final Distribution process, certain payments were made to Top-Up Creditors pursuant to Annex 5 to the CVA (and Clause 12.4 of the CVA). Annex 5 provides (in summary) that the creditors of certain CVA Companies are, subject to the availability of funds and provided that no creditor receives more than an aggregate of 100 pence in the pound on the principal amount of its Allowed CVA Claim, entitled to an additional 5p on their Allowed CVA Claim. The funds to make such payments were held in the Top-Up Escrow Accounts, separate accounts in the name of TXU Acquisitions Limited (in administration and subject to a company voluntary arrangement) (an ATL company), and the CVA Supervisors of TXU EET and TXU Acquisitions are the Top-Up Escrow Agents with control over withdrawals from, and payments to, those accounts. Annex 5 provides that payments made from such funds "*shall be treated as payments by TXU Acquisitions to*

¹ The CVAs of all CVA Companies other than TXU UK Limited and TXU Direct Sales Limited were modified in 2012 following the decision of Mr Justice Newey

the relevant Top-Up Creditor". For that reason, Top-Up Payments do not fall within the definition of "Distribution" which is any distribution by a CVA Supervisor to a CVA Creditor.

- 2.2 Paragraph 2.3.7 of Annex 5 provides that, on a final Distribution, the balance of funds standing to the credit of the Top-Up Escrow Accounts (following payment to the Top-Up Creditors) is paid to TXU EET (other than the Additional Top-Up Escrow Account, which has (and will continue to have until the termination of the CVAs) a nil balance). Further, paragraph 2.3.9 of Annex 5 provides that the final distribution payable by TXU EET to TXUEG must be adjusted to take account of any funds payable to TXU EET pursuant to paragraph 2.3 of Annex 5 from those accounts.
- 2.3 However, following the payment of the final Distribution and the Top-Up Payments, the Top-Up Escrow Agents identified that a number of the Top-Up Payments were unclaimed (the "**Unclaimed Top-Up Payments**"). Although the Top-Up Escrow Agents attempted to contact certain of those Top-Up Creditors with Unclaimed Top-Up Payments, some creditors could not be reached. As at 4 March 2022, the total amount of Unclaimed Top-Up Payments is £106,038.91.
- 2.4 As set out at paragraph 1.7 above, the Office Holders of the CVA Companies have made a final Distribution to all CVA Creditors and are now, subject to the resolution of the issues described in this notice, in a position to terminate all of the CVAs. They intend to terminate the CVAs shortly.
- 2.5 The Top-Up Escrow Agents and the TXU EET CVA Supervisors are keen to protect the interests of those Top-Up Creditors with Unclaimed Top-Up Payments, particularly in light of the modification to the CVAs to deal with Unclaimed Distributions to, in some cases, the same parties with Unclaimed Top-Up Payments. In addition, the Office Holders of TXU EET wish to avoid any delay to the closure of the TXU EET CVA (and therefore, the CVAs of all BTL Companies) whilst seeking to trace those creditors.
- 2.6 Therefore, in order to protect the interests of those creditors who hold Unclaimed Top-Up Payments at the time when the CVAs are terminated, the Office Holders of the CVA Companies propose that Annex 5 of the CVA is modified to provide that on the date of termination of the CVAs, any funds which remain in the Top-Up Escrow Accounts (excluding the Additional Top-Up Escrow Account which, as stated above, has a nil balance) in respect of Unclaimed Top-Up Payments in connection with the final Distribution and which would therefore be payable to TXU EET be transferred to a ring-fenced account of the Joint Liquidators of TXUEG to be held on trust by TXUEG (the "**Account**") for the benefit of those parties entitled to such distributions. This aligns with the treatment of Unclaimed Distributions as at the date of termination of the CVAs (see Clause 21.5 of the CVA).
- 2.7 The CVA currently provides at Clause 36.4 that if, on termination of the CVA, a distribution within the estates of all of the CVA Companies would result in less than £250,000 (or such other amount as the Office Holders of each CVA Company agree) being available for distribution and the CVA Supervisors determine it would be uneconomical to make such distribution (after reserving for any costs necessary to dissolve the CVA Companies or otherwise liquidate them) the balance of assets will be donated to Aspire (registered charity number 1075317).
- 2.8 Therefore, the CVA modifications will provide that after the expiry of one year from the date of the final Distribution, any funds which remain unclaimed in the Account be transferred to Aspire (registered charity number 1075317) provided that the total amount of such funds when aggregated with any Unclaimed Distributions is less than £250,000². The liquidation of TXUEG will then be brought to an end.
- 2.9 This will ensure that the termination of the CVAs of the CVA Companies does not prejudice those creditors entitled to a Top-Up Payment but which have not yet cashed cheques in respect of such payment provided that they take action to encash their cheques or

² As at 4 March 2022, the amount of Unclaimed Distributions is £45,117.79, making the total amount of Unclaimed Distributions plus Unclaimed Top-up Payments £151,156.70

otherwise obtain payment of the Unclaimed Top-Up Payment from the Account within one year from the date of the final Distribution.

- 2.10 The CVA Supervisors of TXU Acquisitions, in their capacity as joint Top-Up Escrow Agents, have consented to the modification of the CVAs as set out in this notice.

3. CVA SUPERVISORS

- 3.1 Clause 15.2 of the CVA provides (amongst other things) that the office of CVA Supervisor for any CVA Company shall be vacated by the CVA Supervisor if that CVA Supervisor resigns his office by 28 days' notice in writing to the Office Holders of that CVA Company. Further, Clause 15.3 of the CVA provides that if there is a vacancy in the office of CVA Supervisor for a CVA Company, the Office Holders of that CVA Company, after consultation with the relevant creditors' committee (if any) shall forthwith appoint as a replacement CVA Supervisor a qualified insolvency practitioner.
- 3.2 On 1 December 2020, John David Thomas Milson of KPMG LLP, 15 Canada Square, Canary Wharf, London E14 5GL gave notice to certain parties of his intention to resign as joint supervisor of the CVAs of TXU Europe Limited and certain of its subsidiaries. The intention was to give notice of his intention to resign as joint supervisor of the CVA of TXUEG but notice was not formally provided to the Office Holders of TXUEG.
- 3.3 In October 2021, the Office Holders of TXUEG were informed of the purported resignation of Mr Milsom and received a copy of the notice referred to above. Following discussion with the remaining supervisors of the CVA of TXUEG, noting that the final Distribution had already been paid and plans were in place to terminate the CVA, the Office Holders of TXUEG determined that it was unnecessary to appoint a replacement CVA Supervisor. Therefore, the Office Holders of TXUEG propose to modify Clause 15.3 of the CVA by adding the words "*unless otherwise agreed by the Office Holders and the remaining CVA Supervisors*".

4. MODIFICATION PROCESS

- 4.1 Clause 34.1 of the CVAs provides as follows:
- "The Office Holder of each CVA Company will have the power at any time after the Implementation Date after consultation with the relevant creditors' committee, without reference to the CVA Creditors or the CVA Supervisors, if they consider it expedient to do so and if it is in the best interests of the CVA Creditors, to modify the provisions of the CVA provided such modifications do not materially alter the effect or economic substance of the CVA in relation to that CVA Company. The Office Holders shall inform the CVA Creditors of any such modifications and such modifications shall be binding on the CVA Creditors and the CVA Supervisors and the CVA shall be modified accordingly in respect of that CVA Company."*
- 4.2 The Office Holders consider that amending (i) Annex 5 of the CVAs to provide that the Top-Up Escrow Agents and the CVA Supervisors be permitted to transfer any funds held in respect of Unclaimed Top-Up Payments to the Account for the benefit of those entitled to such payments and then donate any balance to Aspire (registered charity number 1075317) after one year from the date of the final Distribution; and (ii) Clause 15.3 of the TXUEG CVA to provide that the Office Holders can agree not to appoint a replacement CVA Supervisor (both on the terms set out herein), will change neither the effect nor the economic substance of the CVAs as all amounts will have been distributed and nothing will remain due to be done under each relevant CVA other than to terminate it.
- 4.3 The Office Holders of each of the CVA Companies have (i) consulted with their respective creditors' committees (being the creditors' committee of TXUEG); and (ii) determined that it is in the best interests of its CVA Creditors and expedient to modify each CVA as set out below. The amendments proposed to be made to each of the CVAs set out herein are necessary in order to terminate the CVAs in a timely manner whilst protecting the interests of any party with an Unclaimed Top-Up Payment.

- 4.4 Under Clause 34.1 of the CVA the Office Holders are required to inform CVA Creditors of any such modification which shall be binding on CVA Creditors and the CVA Supervisors. This document constitutes notice to CVA Creditors of those modifications. A copy of this notice has also been provided to the CVA Supervisors of TXU Acquisitions.

PART B

TEXT OF MODIFICATIONS MADE TO COMPANY VOLUNTARY ARRANGEMENTS

1. DEFINITIONS AND INTERPRETATION

Terms defined in the CVAs shall, unless otherwise defined in this document, bear the same meaning when used in this document.

2. MODIFICATIONS

2.1 Annex 5 (Top-Up Escrow)

2.1.1 The following wording shall be added as a new paragraph 1.1.22:

"Unclaimed Top-Up Payment" means any Top-Up Payment which is unclaimed following any Distribution Date and shall, without limitation, include:

- (A) cheques (and the funds represented thereby) which have been returned as undeliverable without a proper forwarding address;
- (B) funds for cheques which have not been cleared; and
- (C) cheques (and the funds represented thereby) which were not mailed or delivered because of an incorrect address."

2.1.2 A new paragraph 2.6 (*Specific provisions relating to Unclaimed Top-Up Payments*) shall be inserted.

2.1.3 A new paragraph 2.6.1 shall be inserted as follows:

"If on the date of termination of the CVA, any funds remain in the Top-Up Escrow Accounts (excluding the Additional Top-Up Escrow Account) in respect of Unclaimed Top-Up Payments in connection with the final Distribution, the Top-Up Escrow Agents shall transfer such Unclaimed Top-Up Payments to a ringfenced account held by the Joint Liquidators of TXUEG nominated by the relevant Office Holders to be held on trust by TXUEG for the benefit of those parties entitled to such Unclaimed Top-Up Payments in accordance with the terms of the CVA immediately prior to its termination."

2.1.4 A new paragraph 2.6.2 shall be inserted as follows:

"Any Unclaimed Top-Up Payment and any interest thereon shall, subject to paragraph 2.6.3, be held solely for the purpose of making payment to the Top-Up Creditor who has failed to claim such Unclaimed Top-Up Payment and shall be released to such Top-Up Creditor upon his presentation of proof reasonably acceptable to the CVA Supervisor (or the Joint Liquidators of TXUEG) in accordance with paragraph 2.6.1 of his entitlement, together with any interest (net of tax and charges payable thereon) earned on the relevant amount."

2.1.5 A new paragraph 2.6.3 shall be inserted as follows:

"Any Unclaimed Top-Up Payment shall be deemed unclaimed property at the expiration of one year from the final Distribution Date; and the holder of such Unclaimed Top-Up Payment shall, from that time, waive his rights thereto. The funds resulting from such waived Unclaimed Top-Up Payments (including any interest earned on such amount (net of tax or charges payable thereon)), shall be donated to Aspire (registered charity number 1075317) provided that the aggregate amount of funds donated to Aspire pursuant to this paragraph 2.6.3 and pursuant to Clause 21.5.3 shall not exceed £250,000."

2.1.6 A new paragraph 2.6.4 shall be inserted as follows:

"In relation to any Unclaimed Top-Up Payments deposited with TXUEG in accordance with paragraph 2.6.1 and held or distributed by TXUEG in accordance with paragraphs 2.6.2 and 2.6.3, the following provisions shall apply:

- (A) the Joint Liquidators of TXUEG shall have no duties or responsibilities in relation to Unclaimed Top-Up Payments other than those expressly set out herein;
- (B) the Joint Liquidators of TXUEG will not incur any personal liability in connection with the receipt or payment of any Unclaimed Top-Up Payment;
- (C) the Joint Liquidators of TXUEG may perform their duties through agents and employees and shall be entitled to rely upon any communication, instrument, document or information (whether provided in writing or orally) considered by them to be genuine and correct and shall be entitled to rely upon the advice of or information obtained from any professional advisor or other person instructed by them, considered by them in good faith to be competent;
- (D) the Joint Liquidators of TXUEG shall not assume any duty or responsibility to any Top-Up Creditor as a result of the operation of paragraphs 2.6.1 to 2.6.3 of Annex 5 of each CVA other than those expressly set out herein;
- (E) save for gross negligence or wilful default, neither the Joint Liquidators of TXUEG nor any of its members, employees or agents shall incur any personal liability to any CVA Creditor as a result of the operation of paragraphs 2.6.1 to 2.6.3 of Annex 5 of each CVA; and
- (F) Clauses 21.6.3 and 21.6.5 of each CVA shall apply to any Unclaimed Top-Up Payment held by TXUEG as though references to the "CVA" were to a "CVA as terminated in accordance with its terms" and references to the "CVA Supervisors" were references to "Joint Liquidators of TXUEG".

2.1.7 A new paragraph 2.6.5 shall be inserted as follows:

"The provisions of paragraph 2.6 (*Specific provisions relating to Unclaimed Top-Up Payments*) shall survive a termination of the CVA pursuant to Clause 36.2 (*Termination of the CVAs*)."

2.2 Clause 15.3

2.2.1 The following wording shall be added at the end of Clause 15.3 of the TXUEG CVA:

", unless otherwise agreed by the Office Holders and the remaining CVA Supervisors."

2.3 These amendments to the CVAs shall be governed in accordance with English law and the provisions of Clause 38 (*Governing Law*) of each of the CVAs shall apply as though set out herein in full.



.....
Alan Robert Bloom

Joint Liquidator/Joint Administrator (as applicable) and Joint Supervisor

For and on behalf of

TXU EUROPE GROUP Plc (in Liquidation and subject to a company voluntary arrangement)

TXU EUROPE ENERGY TRADING LIMITED (in Administration and subject to a company voluntary arrangement)

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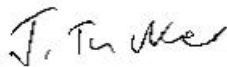
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TXU EUROPE RENEWABLE GENERATION LIMITED (in Liquidation and subject to a company voluntary arrangement)

As agent and without personal liability



.....
James Robert Tucker

Joint Administrator/Joint Liquidator (as applicable) and Joint Supervisor

For and on behalf of

ANGLIAN POWER GENERATORS LIMITED (in Administration and subject to a company voluntary arrangement)

PETERBOROUGH POWER LIMITED (in Administration and subject to a company voluntary arrangement)

TXU EUROPE POWER SERVICES LIMITED (in Administration and subject to a company voluntary arrangement)

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As agent and without personal liability