

**ALERTS**

# Loan Market Association Updates European Secondary Trading Documentation

**May 21, 2012**

Effective for trades entered into on or after 14 May 2012, the Loan Market Association (“LMA”) amended certain secondary trading documentation relating to (1) the treatment of delayed settlement compensation and (2) the payment of transfer fees in a bank debt transfer.

The revisions made reflect changes to certain default positions under the LMA regime:

1. The incorporation of Delayed Settlement Compensation (“DSC”) in a bank debt trade is now automatic unless specifically excluded by the trading parties at time of trade. This is in contrast to the previous position of DSC, which required its incorporation to be specifically agreed to between a buyer and a seller. The inclusion of DSC is a commercial arrangement between the parties, structured to put them in the same economic position they would have been in vis-à-vis the bank debt had their trade settled within T+10 for par trade transactions and T+20 for distressed trade transactions.
2. Unless agreed otherwise, the payment of any transfer fees due in the context of a bank debt transfer will now be shared equally between buyer and seller. Additionally, if a buyer or seller allocates a trade to more than one entity, the relevant counterparty will only be responsible for payment of half of one fee. This is a change from the previous position which allowed parties to allocate the economic costs between

themselves, with the buyer responsible for the administrative payment of the fee to the agent.

The LMA has also revised some of the terminology in its Netting Agreements, Termination and Transfer Agreements and Termination Agreements, though this does not effect any substantive change to the structure of the documentation to be executed, or the process to be undertaken, by parties in any of these transactions.

A notable omission from the recent revisions to the secondary trading documentation is any incorporation of the principles set out under the “LMA Transparency Guidelines,” originally released by the LMA in June 2011. The LMA Transparency Guidelines differentiate between different levels of confidential information a party receives in the context of being a bank debt lender to a particular borrower, and sets out a number of best practice guidelines to which parties to a bank debt transaction should adhere. At the time of its release, the LMA stated that it would contemplate incorporating certain principles set out in the LMA Transparency Guidelines into future secondary trading documentation, where applicable. Many secondary loan market participants view these guidelines unfavourably and the Alternative Investment Management Association circulated a letter to the LMA in March 2012 outlining concerns about the impact these guidelines could have on future lending and trading liquidity. Therefore, the LMA’s decision not to include any language in its secondary trading documentation incorporating the guidelines may be seen as a positive result by many market participants. There is no indication at this time when or if the LMA will update its secondary trading documentation further to incorporate such guidelines.

For a comprehensive discussion of the LMA Transparency Guidelines and the treatment of bank debt as an asset class in the UK, please access our 2 May 2012 webinar, “European Distressed Debt and Claims Trading — Spotlight on Compliance and Regulatory Issues.”

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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