ALERTS

LSTA Publishes Revised Secondary Trading Documents

June 13, 2017

The Loan Syndications and Trading Association ("LSTA") published revised secondary trading documents on June 9, 2017. The revised documents will apply to trades with a trade date *on or after June 9, 2017*. The most significant changes that have been incorporated in all documents are highlighted below:

- The "Paid on Settlement Date" interest convention has been revised to include a clawback right of the buyer. "Paid on Settlement Date" previously provided that all interest paid by the borrower up until the Settlement Date was for the benefit of seller and an amount equal to the accrued but unpaid amount of such interest up until the Settlement Date ("POSD Amount") would be paid by buyer to seller. If the borrower then paid the POSD Amount to buyer, buyer would keep that amount. If such amount was paid to seller, seller would pay the amount to buyer. If, however, the borrower later failed to pay the POSD Amount on or prior to the scheduled due date (taking into account any applicable grace period) in accordance with the credit documentation or any adequate protection order, seller would not be required to reimburse buyer for such amount. The LSTA has now revised the standard terms and conditions to allow buyer to clawback any amounts it has paid to seller if the borrower later fails to pay.

- "Non-Recurring Fees" are now defined as amendment, consent, waiver and other similar non-ordinary course fees that are *payable* in connection with the Purchase Amount of the Debt pursuant to the Credit Documents from and after the Trade Date, and any other

amounts *payable* in connection with the Purchase Amount of the Debt pursuant to the Credit Documents from and after the Trade Date not constituting Interest and Accruing Fees or PIK Interest.

- The Interest Payments and Fees section of the Par Confirmation Standard Terms and Conditions (Section 5) now includes "Adequate Protection Payments" (if applicable) in addition to "Interest and Accruing Fees" and the interest convention shall apply to both.

- The LSTA has included language in its revised documents in light of the new DOL ERISA Fiduciary Regulation that took effect on June 9, 2017. The DOL regulation is expanding the definition of who is a fiduciary in the context of marketing investment products to individual retirement accounts and ERISA-covered pension plans. For more information about the new rule, please see the *SRZ Alert* "New DOL ERISA Fiduciary Regulation Takes Effect (at Least for Now) " (June 2, 2017).

- The previously inconsistent references to "Credit Agreement" and "Credit Documents" across the trading documents have now been replaced with the term "Credit Documents."

The defined term "Federal Funds Rate" has been amended to reflect the Federal Reserve Bank of New York changes to the calculation of the federal funds effective rate.

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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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