

ALERTS

LMA Updates Terms and Conditions for Par and Distressed Debt Trades

20 June 2017

On 13 June 2017, the Loan Market Association (the 'LMA') released updated Standard Terms and Conditions for Par and Distressed Trade Transactions (Bank Debt/Claims) ('T&Cs'), that will apply to transactions with a trade date on or after 27 June 2017. The updated T&Cs remove the current 'Pricing Panel' mechanism for resolving disputes between parties over the reasonableness of the purchase price for a substitute buy-in or sell-out trade.

The Current T&Cs

Currently, if a par trade does not settle within 60 business days of the trade date, due to either party failing to perform its settlement delivery obligations, the non-defaulting party is entitled to give notice to terminate the trade and seek a substitute transaction elsewhere^[1]. The defaulting party then has a further 15-day cure period in which it must perform its obligations in respect of the trade. If the defaulting party's obligations are not fulfilled by the end of the cure period, the non-defaulting party is entitled to seek a substitute counterparty with whom to settle the trade. The non-defaulting party must send notice to the defaulting party of the purchase price payable under the substitute transaction. Clause 23.3(e) of the current T&Cs provides a dispute resolution mechanism for the defaulting party to challenge the reasonableness of the substitute trade purchase price. In such instances, the LMA Pricing Panel^[2] will calculate and determine a conclusive purchase price, as per a predetermined calculation methodology, that is binding on all parties.

The Updated T&Cs

The updated T&Cs do not include such a dispute resolution mechanism. Instead, substitute buy-in and sell-out transactions must be conducted at *'arm's length ... in good faith ... [and] at a price which is commercially reasonable in the circumstances'*[3]. The effect of this amendment is to remove an independent verification of the purchase price and instead leave it to the parties' judgement as to whether a substitute transaction is priced fairly. Therefore the parties' options for redress in cases of a dispute have been restricted, and, if no commercial resolution can be found, parties may be forced to litigate.

LMA Secondary Training Seminar, 22 June 2017

SRZ attorney Anthony Lombardi will be speaking on Distressed Debt Trade Issues at the Secondary Training Seminar held by the LMA on 22 June 2017 in London.

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For further information on the amendments to the T&Cs or the LMA event above, please contact the authors.

[1] 23.3(b) of the updated LMA Standard T&Cs.

[2] The LMA Pricing Panel will be made up of members of the LMA.

[3] 1.2 of the updated LMA Standard T&Cs.

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