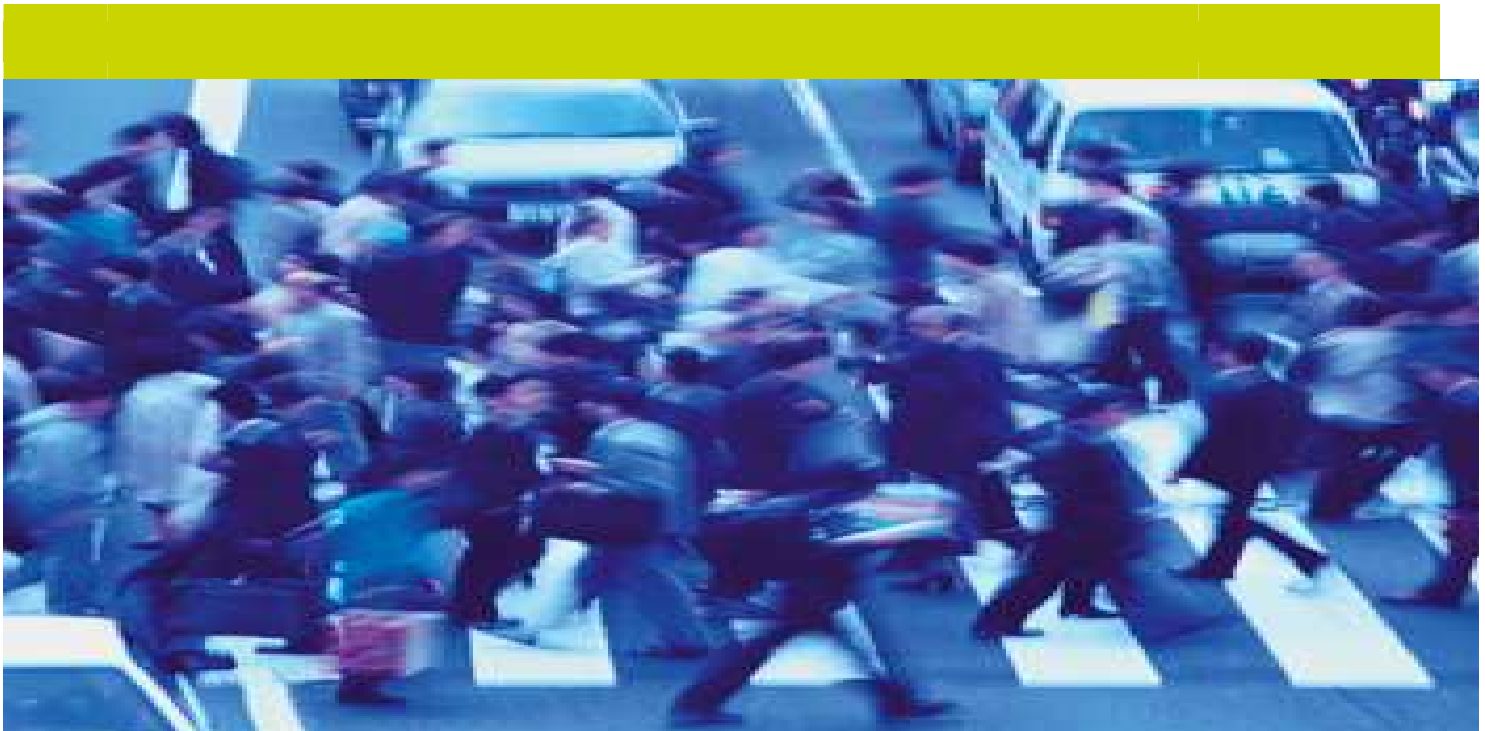


Loan Trading under LMA Documentation
A Guide for Traders and In-house Counsel



Further information

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July 2012

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Loan Trading under LMA Documentation

A Guide for Traders

This note is prepared to give traders and in-house counsel legal and practical guidance on the steps to execute a secondary loan transaction under the Loan Market Association ("**LMA**") documentation. In preparing this note, we have adopted some of the recommendations and commentaries published by the Loan Market Association.

In this note, the key "**T**" means the Trade Date and "**BD**" means Business Days. The timeline for the steps set out below are for reference only.

Timeline	Step
Before T	<ol style="list-style-type: none"> <li data-bbox="341 938 983 965">1. Parties determine entity that will engage in the trade <p data-bbox="379 994 1461 1081">Whilst it is recognised that parties may agree to a change in the nominated Buyer and Seller between the Trade Date and the Settlement Date, you are encouraged to provide the required information for the KYC process as soon as possible.</p> <li data-bbox="341 1115 959 1142">2. Parties exchange confidentiality letter (if required) <ol style="list-style-type: none"> <li data-bbox="379 1171 1233 1198">(a) The LMA form is usually used. Some banks have their own standard form. <li data-bbox="379 1227 1442 1279">(b) In all cases, the best practice is to review the confidentiality provisions of the underlying Credit Documentation. <li data-bbox="379 1308 1466 1359">(c) Where the Credit Documentation is silent (unusual), borrower's consent must be obtained before disclosure. <li data-bbox="379 1388 1476 1440">(d) You should consider having a master confidentiality agreement in place with counterparties whom you deal with regularly. <li data-bbox="341 1469 1031 1496">3. Seller sends Credit Documentation to Buyer (if required) <p data-bbox="379 1525 1382 1585">Once the confidentiality agreement has been signed, the Seller can provide the Buyer with the necessary information, including copies of the Credit Documentation and financial information.</p> <li data-bbox="341 1615 823 1641">4. Parties determine portion to be traded <ol style="list-style-type: none"> <li data-bbox="379 1671 1458 1731">(a) The parties should identify the tranches, sub-tranches, amounts and currencies (of commitment and drawings) to be traded. <li data-bbox="379 1760 1437 1821">(b) The Buyer should be fully aware of all applicable margins and maturities and seek clarification from the Seller if necessary. <li data-bbox="341 1850 1195 1877">5. Buyer commences due diligence on Credit Documentation (if required) <ol style="list-style-type: none"> <li data-bbox="379 1906 1179 1933">(a) Ideally, this should be carried out by the Buyer before the Trade Date. <li data-bbox="379 1962 1458 1989">(b) Any due diligence should not be carried out until the confidentiality agreement has been signed. <li data-bbox="379 2018 1449 2123">(c) The due diligence process should cover: <ol style="list-style-type: none"> <li data-bbox="434 2069 1449 2123">(i) review of the terms of the loan (e.g. principal amount, interest, repayments, prepayments, representations, warranties and events of default);

Timeline	Step
	<ul style="list-style-type: none"> (ii) financial due diligence; (iii) review of the transfer provisions to ensure that the proposed terms of the trade are compliant with the applicable Credit Documentation and other relevant finance documents including, but not limited to, the minimum transfer amount, the minimum hold amount and whether the Buyer is an eligible transferee (e.g. if the parties are unable to verify such compliance, they should consider to proceed with the trade on the basis of settlement by way of funded participation). Note that there may also be additional transfer restrictions imposed in the context of a restructuring such as the requirement to accede to a lock-up or restructuring agreement; (iv) review of security documentation and security perfection issues; (v) review of the current position of the loan (e.g. has an event of default occurred, the progress of any restructuring and whether any formal insolvency proceedings have been commenced in relation to the borrower); and (vi) review of withholding tax and regulatory positions. <p>(d) If you are the Seller, you can consider imposing a deadline for the Buyer to complete its due diligence (e.g. 5 business days from the Buyer's receipt of the Credit Documentation). The Seller is also encouraged to review the transfer provisions to ensure that the proposed terms of the trade are compliant with the applicable Credit Documentation and other relevant finance documents.</p>
T	<p>1. Buyer and Seller enter into trade</p> <ul style="list-style-type: none"> (a) This normally occurs over the phone and will specify only the barest of details in relation to the trade (e.g. the loan being sold, purchase price and basis upon which the trade is done, who is entitled to any actual payments of interest and principal, and any accrued interest before the Settlement Date). There are 4 options for treatment of accrued interest which are: <ul style="list-style-type: none"> (i) Settled Without Accrued Interest – where unless the terms of the Credit Documentation provide for the Agent to distribute interest on a pro rata basis between the Seller and the Buyer, the Buyer will, upon receipt of any interest accrued to the Settlement Date, pay an amount equal to the amount of such interest or Recurring Fee to the Seller; (ii) Paid on Settlement Date – where unless the terms of the Credit Documentation provide for the Agent to distribute interest on a pro rata basis between the Seller and the Buyer, the Buyer pays the Seller on the Settlement Date an amount equal to interest accrued to the Settlement Date; (iii) Paid on Settlement Date and Discounted from next roll-over date – where the same treatment as in paragraph (ii) above applies but accrued interest up to the Settlement Date which is not payable under the Credit Documentation until the next roll-over date is discounted from the roll-over date back to the Settlement Date; and (iv) Trades Flat – where all accrued and unpaid interest and fees on or after the Trade Date will be for the account of the Buyer for no additional consideration. (b) Traders should ensure that they are familiar with the LMA secondary documentation and

Timeline	Step
	<p>terminology so that commercial terms can be agreed between the parties at the time of the trade. From experience, traders often omit to agree whether Delayed Settlement Compensation should be applied and the party responsible for the payment of Transfer Cost. On 14 May 2012, however, LMA revised the secondary loan documentation to make the incorporation of Delayed Settlement Compensation and equal split of Transfer Cost between the Seller and the Buyer the default position. If the trade is to settle as a funded participation, the parties should agree on whether to grant the participant information rights, collateral for undrawn commitment and voting rights (in the case of a distressed trade).</p> <p>(c) Under the LMA standard forms, unless a contrary intention is expressed at the time (e.g. the parties agree that the trade is "subject to contract" or "subject to a satisfactory form of Trade Confirmation"), a verbal trade is deemed to be binding.</p> <p>(d) Where a trade is not carried over the phone (by e-mail for example) those written terms will constitute a binding contract.</p> <p>2. Parties follow-up in writing</p> <p>(a) The parties should as soon as possible follow-up in writing (e-mail / Bloomberg) to reinforce the details of the oral trade with their counterparty with written (e-mail / Bloomberg) acknowledgement as to the counterparty's agreement with the preference for this exchange to occur on the Trade Date.</p> <p>(b) The written follow-up is intended solely as a potentially helpful intermediate step in the process of documenting the trade. Users should be aware that they are bound by the terms of trade as agreed at the time of the trade.</p>
T + 1 BD	Seller sends request to Agent for borrower consent
	<p>(a) Whether the borrower's consent to transfer loans is required is normally governed by the underlying Credit Documentation.</p> <p>(b) If a borrower refuses its consent to the transfer (unusual since most Credit Documentation states that a borrower should not unreasonably withhold consent), the Seller can transfer their risk to the Buyer by way of funded participation.</p> <p>(c) Situations where a borrower has refused to acknowledge or agree to a transfer of debt have arisen (notably in Thailand) where some borrowers, being restructured, have refused to give consent to a transfer unless the Seller and/or the Buyer agree to a restructuring plan that has been proposed. Another situation where consent is commonly withheld is where the Buyer does not qualify as a "Financial Institution" as defined in the Credit Documentation.</p> <p>(d) Often, however, if a loan is syndicated, the borrower's consent is not required. In such case, the Agent will merely record the transfer on Settlement Date.</p> <p>(e) Syndicated loan agreements will usually provide that a transfer fee is payable to the Agent in respect of any transfer and the transfer will not be registered until this fee is paid.</p> <p>(f) Note that the refusal of any necessary consent will not lead to the transaction being terminated</p>

Timeline	Step
	without any liability on either party. Instead, the Seller and the Buyer will be required to settle the proposed transaction by funded participation or, if the parties have agreed not to settle the proposed transaction by funded participation (by electing " <i>Legal Transfer only</i> " on the Trade Confirmation), by some mutually acceptable alternative methods which provide the parties with the economic equivalent of the agreed-upon trade.
T + 2 BD	<p>1. Responsible party sends Trade Confirmation to the other party</p> <p>(a) The parties choose who is to prepare the documentation required to complete the transaction (conventionally this will be the Seller but is always subject to negotiation).</p> <p>(b) The LMA Standard Terms and Conditions are incorporated into the Trade Confirmation. Most parties do not amend the terms of the LMA Standard Terms and Conditions. It is market practice to take them as they are.</p> <p>2. Agent sends consent request to borrower</p>
T + 4 BD	Other party returns Trade Confirmation to responsible party
T + 5 BD	<p>Responsible party sends Transaction Documentation to other party</p> <p>(a) Transaction Documentation usually entail:</p> <p>(i) a transfer instrument (the form of which is usually provided in the relevant Credit Documentation and normally requires the Agent's signature); and</p> <p>(ii) a pricing letter (a simple letter which sets out the Settlement Amount (to be paid by the Buyer to the Seller on the Settlement Date) and details of the Seller's bank account).</p>
T + 7 BD	<p>Borrower's approval of trade</p> <p>(a) This timeline recommended by LMA assumes that:</p> <p>(i) the borrower reverts with its consent within 5 business days of receiving the request; or</p> <p>(ii) if the borrower has not responded to the request, the Credit Documentation contains a clause deeming borrower's consent to have been given 5 business days after the relevant request (such a clause is contained in the standard LMA Facility Agreement).</p> <p>(b) From experience, it usually takes borrowers longer than 5 business days to revert with their consent.</p>

Timeline	Step
T + 7 BD (Par Trade) or T + 15 BD (Distressed Trade)	<p>Both parties sign Transaction Documentation and deliver to Agent</p> <p>(a) The parties should agree on the logistics of signing and delivery.</p> <p>(b) Some Credit Documentation requires both originals and copies of the Transaction Documentation to be delivered to the Agent. The Credit Documentation may also specify the number of originals and copies that are required to be delivered to the Agent.</p>
T + as soon as reasonably practicable	<p>1. Settlement Date</p> <p>This is the date on which the trade is legally completed and when:</p> <p>(a) the Buyer pays the Settlement Amount to the Seller; and</p> <p>(b) with respect to a transfer, the Agent records the transfer.</p> <p>2. Post-Settlement Date</p> <p>The following may be required to be done:</p> <p>(a) serve any necessary notices (e.g. to the borrower where the transaction is completed by assignment);</p> <p>(b) carry out any registration (e.g. registration of the Buyer as a secured party in certain jurisdiction is required); and</p> <p>(c) any other matters that need to be done after the Settlement Date.</p>
T + 10 BD (Par Trade) or T + 20 BD (Distressed Trade)	<p>Delayed Settlement Compensation starts to accrue (if applicable)</p> <p>(a) Since 14 May 2012, although the default position is for Delayed Settlement Compensation to be incorporated, parties are free to choose Delayed Settlement Compensation to be applied to a trade (from our experience, it is not applied in most cases). Ideally, this should be agreed at the time of the trade.</p> <p>(b) Where Delayed Settlement Compensation applies to a trade, it will begin to accrue 10 business days from the Trade Date (in the case of a par trade) or 20 Business Days (in the case of a distressed trade).</p> <p>(c) In such case, the Buyer shall pay the Seller on the Settlement Date an amount equal to interest that would accrue for each day during the delay period.</p> <p>(d) The way to calculate Delayed Settlement Compensation is the same for both par and distressed trades, which is set out in Condition 10.2 of the LMA Standard Terms and Conditions.</p>

Timeline	Step
T+ 60 BD (Par Trade only)	Buy-in/Sell-out ("BISO") applies if one party fails to perform settlement delivery obligations (if applicable) <ul style="list-style-type: none"><li data-bbox="379 770 1398 824">(a) BISO is incorporated automatically into the Trade Confirmation for a par trade but one can disapply it.<li data-bbox="379 860 1484 976">(b) BISO kicks in when a transaction is not settled on or before the date that is 60 business days after the Trade Date because either party fails to perform its settlement delivery obligations (e.g. failure to execute and return the signed Trade Confirmation). The non-defaulting party can at any time thereafter deliver a notice to the defaulting party of its intention to terminate the trade.<li data-bbox="379 1012 1484 1093">(c) The defaulting party then has 15 business days to enter into and deliver the necessary settlement obligations. If it does not, the non-defaulting party may enter a substitute transaction with any other counterparty.<li data-bbox="379 1128 1484 1209">(d) The defaulting party shall pay the non-defaulting party an amount to cover the difference between the original trade and the substitute trade. The way to calculate the compensation is set out in Condition 22.3 of the LMA Standard Terms and Conditions.<li data-bbox="379 1245 1177 1272">(e) From experience, we have not seen the BISO clause being enforced.

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