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Distressed Debt & Claims Trading ADVISORY ■

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LSTA Primary Delay Compensation Goes Live

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Effective March 16, 2020, the Loan Syndication & Trading Association (LSTA) published a new suite of loan trading documentation. For all LSTA par/near par loan trades and LSTA distressed loan trades entered into on and after March 16, loan market participants will need to use the new form documentation to paper syndicated loan trades. The primary thrust of the new changes made to the LSTA trading documentation is to provide lenders that are part of a primary syndication of new money facilities to be able to receive the benefit of delayed compensation for primary trades that do not settle quickly. As part of the change the LSTA introduced a brand-new trade confirmation, the LSTA Primary Allocation Confirmation ("Primary Confirm"). The other material change relates to the standard terms and conditions to par/near par trade confirmations ("Par ST&C").

Before the launch of the Primary Confirm, the syndication of new money facilities were typically documented by parties utilizing the LSTA form "Institutional Allocation Confirmation," which the LSTA published way back in 2005. The Institutional Allocation Confirmation is a short, two-page document that did not provide parties that committed to fund a new money allocation with the benefit of delayed compensation if a primary trade did not settle quickly. With the introduction of the new Primary Confirm, initial lenders that are part of the primary syndication, and comply with certain rules-based requirements under the Primary Confirm, will generally be entitled to receive the benefit of delayed compensation from and after nine business days from the effective date of a new money facility.

As a gating matter, however, the Primary Confirm will only apply when the buyer receives an allocation of a new money facility from the initial lead lender that funded the facility and is also the administrative agent (or is an affiliate of the administrative agent). Thus, if Bank X is the lead lender that funds the initial facility but the administrative agent is Bank Y (and Bank Y is not an affiliate of Bank X), the Primary Confirm will not apply.

When a Primary Confirm applies to a new money facility, a buyer will generally be required to meet certain terms and conditions to be entitled to receive the benefit of delayed compensation for a primary trade that does not settle quickly. Such requirements include the buyer being KYC approved, having an MEI identifier, timely executing a trade confirmation and assignment agreement, and timely paying the purchase price. It is also notable that there are myriad detailed requirements placed on the seller/lead lender that if not met can (subject to limited exceptions) automatically entitle a buyer to the benefit of delayed compensation under a Primary Confirm.

To the extent a Primary Confirm is applicable, the first thing a buyer needs to be aware of to understand the new framework of rules is whether the allocation to a buyer was provided on or before the effectiveness of the new money facility (or after the effectiveness of the new money facility). If a buyer received its allocation on or before the effectiveness of a new money facility, the buyer will typically be required to sign the trade confirmation and assignment agreement within three business days of the effective date of the credit agreement. For trades where a buyer receives an initial allocation from the lead lender/administrative agent after the effective date of the credit agreement, a buyer would generally be required to sign the trade confirmation and assignment agreement within three business days of the date it received its allocation.

The thrust of the changes made to the Par ST&Cs relates to situations when a secondary trade (as opposed to a primary allocation trade) is entered into in connection with a new money facility where a primary lender that received an allocation under a Primary Confirm would have been capable of receiving the benefit of delayed compensation. If a trade is entered into with a downstream buyer on or before one business day after the effective date of a new facility, it will be considered a "pre-trigger trade." If such a secondary trade is entered into after the effectiveness of a facility on either the allocation date of a facility (or the first business day after the allocation date), the trade would be considered a "post-trigger trade." If a secondary trade entered into is not capable of being considered a pre-trigger trade or a post-trigger trade, but the trade is entered into on a date on or before the sixth business day of the effectiveness of a new facility, the trade would be considered an "early day trade."

A pre-trigger trade, post-trigger trade, and early day trade will generally only apply for secondary trades entered into right near the time when a new money facility is provided to a borrower. All other trades will be referred to as "secondary trades" under the new Par ST&Cs. As with existing early day trades and secondary trades, to be entitled to receive delayed compensation under the Par ST&Cs, the buyer under a pre-trigger trade or post-trigger trade will need to meet certain rules-based requirements (such as timely signing the trade confirmation and assignment agreement and being ready to settle quickly). If the buyer meets such requirements, it will be eligible to receive delayed compensation on and after nine business days of the effectiveness of the facility for pre-trigger trades and nine business days of the allocation date for post-trigger trades. Regular secondary trades will continue to have delayed compensation begin to accrue on and after the seventh business day after the trade date.

It's important for market participants to note that the new Primary Confirm and rules relating to pre-trigger trades and post-trigger trades are detailed and complex. Our team at Alston & Bird is intimately familiar with the nuances and terms of the complex new rules, and we would be happy to speak with clients and friends who may have questions about the new rules and how best to prepare their institution to be ready to comply with them.

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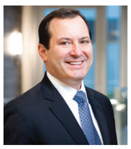

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